

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
ERIC SWALWELL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Case No. 1:21-cv-00586-APM
DONALD J. TRUMP, <i>et al.</i> ,	)	
	)	
	)	
Defendants.	)	
_____	)	

**PLAINTIFF’S MOTION FOR ADDITIONAL TIME TO SERVE THE COMPLAINT  
AND FOR OTHER RELIEF AS TO DEFENDANT MO BROOKS**

Plaintiff Eric Swalwell, through undersigned counsel, and pursuant to Fed. R. Civ. P. 4, seeks additional time in which to serve the summons and complaint in this matter on Defendant Mo Brooks. In support of this motion, Plaintiff states as follows:

Plaintiff filed the complaint in this case on March 5, 2021. (ECF Dkt. No. 1.) Under the federal rules, Plaintiff is required to serve each defendant with a summons and a copy of the complaint within 90 days of the filing of the complaint – in this case, by June 5, 2021. Fed. R. Civ. P. 4(m). However, upon a showing of good cause, the Court “must extend the time for service for an appropriate period.” *Id.*

For the reasons described below, and for good cause shown, Plaintiff seeks an extension of sixty (60) days to serve Defendant Mo Brooks in light of his ongoing refusal to waive service and the inherent difficulties of attempting service on a sitting Member of Congress. Further, Plaintiff requests that the Court order that service be accomplished by a United States marshal – or anyone else specially appointed by the Court – because of the special circumstances here. *See*

Fed. R. Civ. P. 4(c)(3). Finally, Plaintiff reserves the right to seek recovery of costs associated with his efforts to serve Brooks. *See* Fed. R. Civ. P. 4(d)(2).

1. Mo Brooks unquestionably knows about the instant lawsuit. Just hours after it was filed, Brooks tweeted a series of baseless accusations against Plaintiff in response:



And yet, Brooks has refused to waive service or even speak to undersigned counsel about the case. In stark contrast, Defendant Rudolph Giuliani waived service on March 18, 2021 (ECF Dkt. No. 11) and Defendants Donald J. Trump and Donald J. Trump Jr. waived service shortly thereafter, on March 24. (ECF Dkt. Nos. 9, 10.) Moreover, Trump, Trump Jr., and Giuliani have already moved for dismissal of the complaint, and the Court recently approved the parties' proposed briefing schedule under which these motions will be fully briefed by July 22. (May 31, 2021 Minute Order of the Court.)

2. After receiving the waiver forms from the other Defendants, Plaintiff's counsel, Philip Andonian, contacted Defendant Brooks' Washington, D.C. office to ask if Brooks was also willing to waive service. Counsel spoke to two different staff members on two separate occasions, and each time was promised a return call that never came. On April 21, 2021, counsel emailed Brooks (care of his Chief of Staff and chief Counsel) a formal waiver request and attached a copy of the complaint and a pre-filled Waiver of Service form. Counsel further

informed Brooks of the adverse consequences of his refusal to waive. *See* Fed. R. Civ. P. 4(d). A copy of this email is attached here as Exhibit A. To date, neither Brooks nor any member of his staff has responded to this request.

3. Given Brooks' refusal to waive service, Plaintiff had to engage the services of a private investigator to attempt to serve Brooks personally – a difficult feat under normal circumstances that has been complicated further in the wake of the January 6 insurrection at the Capitol that Defendants incited. Indeed, until very recently, public access to the Capitol grounds – including the Rayburn House Office Building, where Brooks' office is located – has been completely cut off, with only Members of Congress and their credentialed staff having access.<sup>1</sup>

4. Plaintiff's investigator has spent many hours over many days in April and May at locations in multiple jurisdictions attempting to locate and serve Brooks, to no avail.<sup>2</sup> Plaintiff has borne all costs associated with these efforts.

5. Because Brooks has refused to waive service, and given the ongoing difficulties serving Brooks directly, Plaintiff believes it is unlikely that he will serve Brooks before the current June 5 deadline. Accordingly, Plaintiff seeks an additional period of sixty (60) days in which to serve Brooks, and also requests that the Court order the assistance of the United States Marshals Service (or other individual or entity designated by the Court) to accomplish service.

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<sup>1</sup> *E.g.*, [https://www.washingtonpost.com/local/a-more-solemn--and-secure--us-capitol-two-days-after-riot/2021/01/08/9a35e5c2-51da-11eb-bda4-615aaefd0555\\_story.html](https://www.washingtonpost.com/local/a-more-solemn--and-secure--us-capitol-two-days-after-riot/2021/01/08/9a35e5c2-51da-11eb-bda4-615aaefd0555_story.html)

<sup>2</sup> Plaintiff intentionally omits details of the specific steps taken to personally serve Brooks since these efforts are ongoing.

**Conclusion**

For the foregoing reasons, Plaintiff requests that this motion be granted and the requested relief ordered.

Dated: June 2, 2021

Respectfully submitted,

/s/ Philip Andonian  
CALEBANDONIAN PLLC  
Philip Andonian (D.C. Bar No. 490792)  
Joseph Caleb (D.C. Bar No. 495383)  
1100 H Street, N.W., Ste. 315  
Washington, D.C. 20005  
Tel: (202) 953-9850  
Email: phil@calebandonian.com  
joe@calebandonian.com

/s/ Matthew Kaiser  
KAISERDILLON PLLC  
Matthew Kaiser (D.C. Bar No. 486272)  
Sarah Fink (D.C. Bar No. 166663)  
1099 Fourteenth Street, N.W., 8th Fl.  
Washington, D.C. 20005  
Tel: (202) 640-2850  
Email: mkaiser@kaiserdillon.com  
sfink@kaiserdillon.com

/s/ Barry Coburn  
COBURN & GREENBAUM PLLC  
Barry Coburn (D.C. Bar No. 358020)  
Marc Eisenstein (D.C. Bar No. 1007208)  
1710 Rhode Island Avenue, N.W., 2nd Fl.  
Washington, D.C. 20036  
Tel: (202) 643-9472  
Email: barry@coburngreenbaum.com  
marc@coburngreenbaum.com

*Attorneys for Plaintiff Eric Swalwell*

**EXHIBIT A**

## Philip Andonian

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**From:** Philip Andonian <phil@calebandonian.com> on behalf of Philip Andonian  
**Sent:** Wednesday, April 21, 2021 3:55 PM  
**To:** marshall.yates@mail.house.gov; sean.griffin@mail.house.gov  
**Cc:** Joseph Caleb  
**Subject:** Swalwell v. Trump, et al. (D.C. District Court Case No. 1:21-cv-586)  
**Attachments:** 2021-04-21 M. Brooks - Waiver of Service.pdf; Complaint.pdf

**Importance:** High

Dear Messrs. Yates and Griffin:

I represent Congressman Eric Swalwell in the above-captioned case, in which Congressman Brooks has been named as a defendant. I am reaching out to you both (Mr. Brooks' Chief of Staff and Counsel, respectively, as I understand) in the absence of any means of direct contact with Mr. Brooks. I have called Mr. Brooks' D.C. office on two prior occasions asking to speak with someone regarding the lawsuit, but to date my requests have gone unanswered.

Pursuant to Rule 4(d) of the Federal Rules of Civil Procedure, I am asking if Mr. Brooks is willing to waive formal service of the summons and complaint in this matter. I have attached a file-stamped copy of the complaint for your reference, as well as a pre-filled copy of a Waiver of the Service of Summons form. For your convenience, I am happy to accept an electronic copy of the executed waiver form, which you can return to me via email at this address.

Pursuant to Rule 4, Mr. Brooks will have 60 days from today's date (April 21) to respond to the complaint. Because that date, June 20, falls on a Sunday, Mr. Brooks' response therefore would be due on Monday, June 21. Please note that Mr. Brooks has an obligation under the rule to avoid unnecessary expenses associated with formal service of the summons and complaint. Absent a showing of "good cause" – which does not include a belief that the lawsuit lacks merit or is in the wrong venue, or that the district court lacks jurisdiction – Mr. Brooks will be liable for all costs associated with formal service if he elects not to sign and return the attached waiver form. We are already in contact with counsel for the other defendants in the case, all of whom have agreed to waive service, and we now are attempting to reach an agreement on a reasonable schedule for the defendants' responses to the complaint. It would help to streamline things to have Mr. Brooks' participation in that process.

Please advise as soon as possible whether Mr. Brooks will agree to waive service, but in any event no later than COB on May 21. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Philip Andonian | Member

CALEBANDONIAN PLLC

1100 H Street, N.W., Suite 315, Washington, D.C. 20005

O: 202.953.9850 • D: 202.953.9848 • C: 202.368.4124 • F:  
202.217.4100 [phil@calebandonian.com](mailto:phil@calebandonian.com) • [www.calebandonian.com](http://www.calebandonian.com)

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**Certificate of Service**

I hereby certify that on this 2nd day of June, 2021, the foregoing Motion for Additional Time to Serve the Complaint was served upon all parties of record by the Court's CM/ECF system.

/s/ Philip Andonian  
Philip Andonian

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

_____	)	
Representative ERIC SWALWELL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:21-cv-00586-APM
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DONALD J. TRUMP, <i>et. al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**[PROPOSED] ORDER**

Upon consideration of Plaintiff’s Motion for Additional Time to Serve the Complaint on Defendant Mo Brooks, it is hereby **ORDERED** that the Motion is **GRANTED**. Plaintiff shall have an additional sixty (60) days in which to serve Defendant Brooks. The Court further orders that service may be accomplished by the United States Marshals Service.

**SO ORDERED.**

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

\_\_\_\_\_  
Hon. Amit P. Mehta  
United States District Judge