IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-01065-CNS

OKLEKSANDR SHAPOVAL,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security, in his official capacity;
JUAN BALTAZAR, Warden, GEO Aurora Contract Detention Facility, in his official capacity;
GEORGE VALDEZ, Acting Director, Denver Field Office, Enforcement and Removal Operations, U.S Immigration and Customs Enforcement, in his official capacity;
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;
DAVID J. VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement, in his official capacity; and
TODD BLANCHE, Acting Attorney General of the United States, in his official capacity,

Respondents.

MOTION TO CLARIFY AND
REQUEST FOR EXPEDITED CONSIDERATION

Petitioner contends that she has perfected service on Respondents, thereby triggering the deadline for Respondents to respond to the Court's order to show cause, ECF No. 9. *See* ECF No. 12. Respondents' position—in the absence of clarification by this Court—is that Petitioner has not satisfied the service requirements of the Court's order or Fed. R. Civ. P. 4(i). Respondents therefore seek clarification.[1]

In the order to show cause, dated May 18, 2026, the Court directed Petitioner to,

[1] The instant motion does not constitute a waiver of service by Respondents; the purpose of this motion is to clarify whether service has been perfected.

> no later than two calendar days from the entry of this Order … serve Respondents with copies of the Petition and TRO motion and accompanying papers, along with a copy of this Order, by e-mail and by overnight mail *pursuant to the service requirements outlined in Federal Rule of Civil Procedure 4(i)*.

Id. (emphasis added).

Petitioner served Respondents via email on May 19, 2026, and by FedEx overnight mail on May 20, 2026. *See* ECF No. 12 ¶¶ 1-3. However, this does not constitute perfected service "pursuant to the service requirements outlined in the Federal Rules of Civil Procedure 4(i)," because Rule 4(i) requires a party to serve the U.S. Attorney's Office by "send[ing] a copy of [the summons and complaint] *by registered or certified mail*." Fed. R. Civ. P. 4(i)(1)(A)(ii) (emphasis added).[2]

The matter is complicated by the fact that the U.S. Postal Service does not offer mail delivery that is both (1) overnight, *i.e.*, Priority Mail Express, and (2) certified or registered. *See* USPS Screenshots, attached as Exhibit A. In at least one instance, a

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[2] Alternatively, a party may "[hand] deliver a copy of the summons and of the complaint to the United States attorney [or their designee] for the district where the action is brought …" Fed. R. Civ. P. 4(i)(A)(i). Petitioner suggests that sending documents by FedEx constitutes "delivery." *See* ECF No. 12 ¶ 7. But this does not make sense. If sending documents by FedEx were "delivery" under Rule 4(i)(A)(i), there would be no need for the Rule to specify registered or certified mail as an alternative means of service under Rule 4(i)(A)(ii). Nor would Rule 4(i)(1)(A) refer to one form of service as "delivering" documents and the alternative form of service as "sending" them. *See also Parlon v. United States Dep't of Homeland Sec.*, No. CV 24-10886-BEM, 2025 WL 417323, at *2 (D. Mass. Feb. 6, 2025) ("[U]nder Rule 4(i)(1)(A), a plaintiff must either: (i) hand-deliver a copy of the summons and complaint to the United States Attorney for the district wherein the action is brought; or (ii) send a copy of the summons and complaint by registered or certified mail to the civil-process clerk at the United States Attorney's Office."); *cf. Constien v. U.S.*, 628 F. 3d 1207, 1214-15 (10th Cir. 2010) (noting that the predecessor of Rule 4 was previously amended "to expand the pool of potential process servers" and that the legislative history stated that "a *nonparty adult … may serve* [the summons and complaint] personally or *by mail* in the manner authorized by Rule 4(c)(2)(C)(ii)" (emphasis in original).

petitioner has complied with an order to "serve Respondents with copies of the Petition and accompanying papers, along with a copy of this Order, by e-mail and by overnight mail pursuant to the service requirements outlined in Federal Rule of Civil Procedure 4(i)" by sending the petition by *both* FedEx overnight and USPS certified mail. *See Africano Pulido v. Baltazar*, 26-cv-01818-CNS, at ECF No. 4 (Order); ECF No. 5 at 2 (Affidavit of Service). And, as Petitioner points out, service by certified or registered mail may be incompatible with a two-day service deadline. *See* ECF No. 12 ¶ 7.

Respondents do not doubt that Petitioner's counsel acted with due diligence. However, Respondents' interpretation of the Court-ordered service requirements is made in good faith, and it is not Respondents' prerogative to waive these requirements.[3] At the same time, in light of Petitioner's continuing detention, Respondents have no wish to delay adjudication of this matter. Respondents therefore seek clarification and request expedited consideration of this Motion. Once the service issue is resolved, Respondents are prepared to file their response promptly.

Pursuant to D.C.COLO.LCivR 7.1(a), undersigned counsel has conferred with counsel for Petitioner, who has advised that Petitioner opposes this motion. Pursuant to D.C.COLO.LAttyR 5(a), undersigned counsel certifies that she is a member in good standing of the bar of this court.

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[3] Indeed, "[t]he government *cannot* waive service of process." *Constien*, 628 F.3d at 1213 (citing Fed. R. Civ. P. 4(d)) (emphasis added).

Dated: May 26, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 26, 2026, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Sandra Saltrese-Miller
Email: saltreselaw@saltreselaw.com
Counsel for Petitioner

s/ Carrie Schiotz
U.S. Attorney's Office