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

**MICHAEL B. ELLIS, *et al.*,**

**Plaintiffs,**

**v.**

**AMY BERMAN JACKSON, *et al.*,**

**Defendants.**

**Civil Action Nos.**
**1:16-cv-2313 (TJK/GMH)**
*consolidated with*
**1:17-cv-00022 (TJK/GMH)**

**REPORT AND RECOMMENDATION**

These consolidated matters fit into a series of cases filed in this Court targeting certain actions of the federal government connected with the collection of federal income taxes from those who have not filed tax returns. Each of the eleven prior cases has been dismissed for lack of jurisdiction by other judges of this Court, including two of whom are sued here. Plaintiffs Michael B. Ellis, Robert A. McNeil and Harold R. Stanley ("Plaintiffs"), who are proceeding in this matter *pro se*, also sue one member of the Court of Appeals for the D.C. Circuit (together with the District Court judges, the "Judicial Defendants"), two named and two unnamed government attorneys, the Commissioner of Internal Revenue ("Commissioner"), former Attorney General Loretta Lynch, and former President Barack Obama (together, "Defendants"). Plaintiffs allege the Defendants have violated the United States Constitution, the Administrative Procedures Act, and a number of criminal statutes. The case has been referred to the undersigned for full case management. Currently ripe for adjudication is Defendants' Amended Motion to Dismiss. Also pending are eleven nearly identical motions for permissive joinder filed by potential plaintiffs (two of whom were plaintiffs in one or more of the prior related cases), a motion to certify an interlocutory appeal, a motion for a "continuance," and a motion to recuse the undersigned and Judge Sullivan. On the

basis of the entire record,[1] the undersigned recommends that the Court grant Defendants' motion to dismiss. The undersigned further recommends denying the remainder of the pending motions..

**BACKGROUND**

The allegations in the Plaintiffs' operative Complaints center on a scheme in which the Internal Revenue Service ("IRS") "falsifies IRS records" to "enforce the 'income tax'" on those who fail or refuse to file tax returns, so-called "non-filers." *Stanley* Am. Compl., ¶¶ 42–43; *Ellis* Am. Compl., ¶¶ 22–24. More specifically, Plaintiffs allege that "unwitting IRS employees" make "a certain sequence of numeric entries" into an IRS database that results in the creation of a digital record in the "Individual Master File" of a non-filer. *Ellis* Am. Compl., ¶ 22; *see also Stanley* Am. Compl., ¶ 42. That record reflects a falsified date on which a phantom tax return was received and a falsified date on which a "substitute for return" ("SFR") "was supposedly executed." *Ellis* Am. Compl., ¶ 22; *see also Stanley* Am. Compl., ¶ 42. Through this stratagem, Plaintiffs assert, the IRS has concealed the fact that it lacks the authority to perform SFRs on non-filers. *Ellis* Am. Compl., ¶ 11. The United States Attorney General then uses these allegedly non-existent and illegal SFRs "to justify civil or criminal actions against 'non-filer'/victims to collect the tax deficiencies"[2] *Ellis* Am. Compl., ¶ 24; *see also Stanley* Am. Compl., ¶ 44. The Judicial Defendants

[1] The most relevant docket entries for purposes of this Report and Recommendation are: (1) Plaintiffs' First Amended Complaint ("*Ellis* Am. Compl.") [No. 16-cv-2313, Dkt. 3]; (2) Plaintiffs' Amended Complaint ("*Stanley* Am. Compl.") [No. 17-cv-22, Dkt. 3]; (3) Plaintiffs' Memorandum in Opposition to Plaintiffs' Motion to Dismiss ("Pl. Opp.") [No. 16-cv-2313, Dkt. 7]; and (4) Memorandum of Law in Support of United States' First Amended Motion to Dismiss ("Def. Am. Mot.") [No. 16-cv-2313, Dkt. 8]. All citations to page numbers within a particular document will be to the ECF docket page numbers assigned to the document.

[2] As the Court explained in an earlier, similar case (filed by one of the individuals who seeks joinder here):

> Pursuant to Internal Revenue Code section 6020, "[i]f any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary [of the Treasury] shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise." 26 U.S.C. § 6020(b)(1). Furthermore, "[a]ny return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes." *Id.* § 6020(b)(2). In other words, if a person fails to file a tax return, the Government is required to produce a substitute return on behalf of the taxpayer, and that return may be used for other tax-related purposes. *See Byers v.*

have allegedly colluded among themselves and with attorneys from the Department of Justice to misstate the facts of other, similar cases filed by what Mr. Ellis calls "Class plaintiffs" in order to illegally dismiss those cases. *Ellis* Am. Compl., ¶¶ 37, 39–84c; Pl. Opp. at 3–5. In doing so, the Judicial Defendants are themselves "defrauding victims" through the IRS' allegedly illegal scheme. Pl. Opp. at 5. Plaintiffs seek various relief, including an injunction prohibiting Defendants from engaging in the conduct outlined above, such as the creation and use of allegedly falsified tax records, *Ellis* Am. Compl., ¶¶ 108, 110; *Stanley* Am. Compl., ¶98, and a declaratory judgment stating that Congress imposes no duty to pay income taxes on anyone who does not file an income tax return and that, therefore, the federal government lacks the authority to compel non-filers to pay income taxes or to prosecute them for failing to do so, *Ellis* Am. Compl., ¶¶ 100–102; *Stanley* Am. Compl., ¶ 96. In the alternative, Plaintiffs seek a ruling "terminating the so-called 'income tax.'" *Ellis* Am. Compl., ¶ 119.

Plaintiffs or individuals connected with Plaintiffs have brought eleven similar cases in this District. Each of them complained about the IRS' conduct in connection with SFRs for non-filers. *See* Op. and Order, *Dwaileebe v. Martineau*, No. 16-cv-420 (CRC) [Dkt. 19] ("*Dwaileebe* Order"), at *2 (Dec. 31, 2016) (discussing allegations in six consolidated cases that IRS conduct in connection with substituted tax returns "amounts to a 'records-falsification scheme'"); *DePolo v. Ciraolo-Klepper*, 197 F. Supp. 3d 186, 187 (D.D.C. 2016) (discussing allegations of IRS conduct as to substituted tax returns as "criminal conspiracy and records-falsification scheme"); *Ellis v. Jarvis*,

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*C.I.R.*, 740 F.3d 668, 671 (D.C.Cir.), *cert. denied*, — U.S. —, 135 S.Ct. 232, 190 L.Ed.2d 135, *reh'g denied*, — U.S. —, 135 S.Ct. 887, 190 L.Ed.2d 715 (2014). Among other such purposes, substitute returns may be used for the assessment of deficiencies against the taxpayers. *See id.* ("If a taxpayer fails to file a return, the IRS may create a substitute tax form under 26 U.S.C. § 6020(b) and file a notice of deficiency for the total amount it calculates as due.").

*McNeil v. Comm'r, Internal Revenue*, 179 F. Supp. 3d 1, 3 (D.D.C. 2016), *adhered to on denial of reconsideration*, No. CV 15-1288 (CKK), 2016 WL 3189186 (D.D.C. June 7, 2016), *aff'd sub nom. McNeil v. IRS Comm'r*, 689 F. App'x 648 (D.C. Cir. 2017), *cert. denied sub nom. McNeil v. C.I.R.*, 137 S. Ct. 2227, 198 L. Ed. 2d 660 (2017).

No. CV 16-31 (JEB), 2016 WL 3072244, at *3 (D.D.C. May 31, 2016) (quoting allegations that "the IRS scheme to enforce the income tax on so-called 'non-filers' constitutes a criminal falsification of government records and create[s] by fraud the appearance of 'deficiencies' owed by 'non-filers' to the Treasury, and the concomitant duty to file a return"); *McNeil*, 179 F. Supp. 3d at 2 ("All of these actions pertain to activities undertaken by the IRS or the Department of Justice in circumstances in which a person does not file a tax return."); *Ellis v. Comm'r of Internal Revenue Serv.*, 67 F. Supp. 3d 325, 331–33 (D.D.C. 2014) (describing allegations that "the Internal Revenue Service [] is committing criminal fraud by falsifying the tax records of United States citizens who do not file income tax returns"), *aff'd sub nom. Ellis v. C.I.R.*, 622 F. App'x 2 (D.C. Cir. 2015). Each of these actions has been dismissed for lack of jurisdiction, either under the Anti-Injunction Act, 26 U.S.C. § 7421(a), which withdraws jurisdiction from federal and state courts over suits seeking to restrain the collection of taxes, *see DePolo*, 197 F. Supp. 3d at 190, or for lack of standing, or both. *See Dwaileebe* Order at 3 ("As was true of the prior suits filed in this district, those currently before the Court are barred by the Anti-Injunction Act."); *DePolo*, 197 F. Supp. 3d. at 190-91 (dismissing case under Anti-Injunction Act and for lack of standing); *Ellis*, 2016 WL 3072244, at *3 (dismissing case pursuant to Anti-Injunction Act); *McNeil*, 179 F. Supp. 3d at 7 (same); *Ellis*, 67 F. Supp. 3d at 331-38 (dismissing case under Anti-Injunction Act and for lack of standing). Mr. Ellis and Mr. McNeil have since been enjoined from "filing further duplicative lawsuits challenging the IRS's assessment of income taxes."[3] Order of Permanent Injunction, *Crumpacker v. Ciraolo-Klepper*, No 16-cv-1053 (D.D.C. Apr. 19, 2017) [Dkt. 44].

[3] That injunction was entered after these two cases were filed.

Defendants move to dismiss the Complaints in this consolidated action. Their primary argument is that the Court lacks jurisdiction over this action pursuant to the Anti-Injunction Act, for lack of standing, and because the allegations are frivolous.[4]

## DISCUSSION

### A. Legal Standards

To survive a motion to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure challenging the court's subject matter jurisdiction, "the plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence." *Ellis*, 67 F. Supp. 3d at 330. "When considering a motion to dismiss for lack of jurisdiction, unlike when deciding a motion to dismiss under Rule 12(b)(6) [for failure to state a claim], the court 'is not limited to the allegations of the complaint.'" *Id.* (quoting *Hohri v. United States*, 782 F.2d 227, 241 (D.C. Cir. 1986), *vacated on other grounds*, 482 U.S. 64 (1987)). Rather, "[a] court may consider materials outside the pleadings to determine its jurisdiction." *DePolo*, 197 F. Supp. 3d at 189. In addition, although a court must accept the complaint's factual allegations as true and construe those allegations liberally, "the 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.'" *McNeil*, 179 F. Supp. 3d at 6 (quoting *Wright v. Foreign Serv. Grievance Bd.*, 503 F. Supp. 2d 163, 170 (D.D.C. 2007)).

### B. Lack of Jurisdiction

#### *1. The Anti-Injunction Act*

The Anti-Injunction Act provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person

[4] Defendant also seeks dismissal of Plaintiffs' Fifth Amendment and statutory claims (but not their other constitutional claims) for failure to state a claim. *See* Def. Am. Mot. at 12–14. Because the undersigned recommends dismissing the actions on jurisdictional grounds, it is unnecessary to address that argument.

is the person against whom such tax was assessed." 26 U.S.C. § 7421(a). "The effect of this language is to 'withdraw jurisdiction from the state and federal courts to entertain [such] suits.'" *DePolo*, 197 F. Supp. 3d at 190; *see also Ellis*, 2016 WL 3072244, at *3 ("The D.C. Circuit has explained, 'The manifest purpose of § 7421(a) is to permit the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed sums be determined in a suit for refund.'" (quoting *Cohen v. United States*, 650 F.3d 717, 724 (D.C. Cir. 2011)); *McNeil*, 179 F. Supp. 3d at 6 (same); *Ellis*, 67 F. Supp. 3d at 333 (same). Courts have broadly interpreted the Anti-Injunction Act to bar suits to enjoin "not only the assessment and collection of taxes, but [also] 'activities which are intended to or may culminate in the assessment or collection of taxes.'" *Ellis*, 67 F. Supp. 3d at 332 (quoting *Linn v. Chivatero*, 714 F.2d 1278, 1282 (5th Cir.1983)). This consolidated action clearly falls within this prohibition.

The gravamen of Plaintiffs' allegations is that the IRS, by keying certain "numeric entries" into a database, creates the appearance that an SFR was created for a non-filer. *Ellis* Am. Compl., ¶ 22; *Stanley* Am. Compl., ¶ 42. This then allows the IRS to assess tax deficiencies against the non-filer, as well as to seek to collect those deficiencies in court, with help from the Department of Justice. *See McNeil*, 179 F. Supp. 3d at 3; *Ellis* Am. Compl., ¶¶ 24, 33–34; *Stanley* Am. Compl., ¶ 42–45. Indeed, even the allegations against the Judicial Defendants, the President, and the Attorney General contend that they were each complicit in this plot. *Ellis* Am. Compl., ¶¶ 36–37, 46; *Stanley* Am. Compl., ¶¶ 4, 14. Thus, the actions that are the bases for Plaintiffs' claims for relief are actions taken in connection with the assessment and collection of taxes—actions which Plaintiffs seek to enjoin. *Ellis* Am. Compl., ¶¶ 108, 110; *Stanley* Am. Compl., ¶ 98. And, as Judge Jackson, Judge Boasberg, Judge Cooper, and Judge Kollar-Kotelly have recognized, the fact that Plaintiffs allege that the conduct is unlawful does not change the analysis. "It makes no difference

that plaintiff couches these goals in terms of stopping a criminal fraud: that is 'a distinction without a difference.'" *Ellis*, 67 F. Supp. 3d at 332 ((quoting *Tecchio v. United States*, 153 F. App'x 841, 843 (3d Cir. 2005)); *see also Ellis*, 2016 WL 3072244, at *3 (same); *Dwaileebe* Order at 4 (same); *McNeil*, 179 F. Supp. 3d at 7 ("Nor does Plaintiff's claim that he seeks only to restrain *unlawful* activities constitute any answer to Defendants' jurisdiction argument.").

Plaintiffs contend that because the "sworn substitute income tax returns do not exist, Plaintiffs cannot enjoin IRS from preparing them," and therefore these cases are not "within the ambit of the Anti-Injunction Act prohibitions." Pl. Opp. at 3. But this is, again, a distinction without a difference. Even if the SFRs merely appear to exist within an IRS database, Plaintiffs still seek to enjoin the process by which that appearance is created and through which tax deficiencies are then assessed and collected. Thus, "[d]espite [Plaintiffs'] semantics, the allegations of [their] Complaint[s] make clear that [their] claims of 'illegal actions' . . . are based upon the IRS' assessment and/or collection of taxes." *Pollinger v. United States*, 539 F. Supp. 2d 242, 255 (D.D.C. 2008). The undersigned therefore recommends dismissing this case for lack of jurisdiction pursuant to the Anti-Injunction Act.

*2. Standing*

Defendants also move to dismiss Plaintiffs' complaints for lack of standing. Federal courts can assert jurisdiction only over cases or controversies. *Williams v. Lew*, 77 F. Supp. 3d 129, 132 (D.D.C. 2015). A case or controversy is not justiciable unless a plaintiff can show that he has standing to bring suit. *Id.* The "irreducible constitutional minimum of standing" requires that (1) the plaintiffs have suffered an "injury-in-fact" that is "concrete and particularized" as well as "actual or imminent"; (2) the injury is "fairly . . . trace[able]" to the defendants' challenged actions; and (3) it is "'likely,' as opposed to merely 'speculative'" that that the injury will be 'redressed by

a favorable decision.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (alterations in original) (first quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990), then quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 38, 41, 43 (1976)); *see also Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 180–81 (2000).

The bulk of the injuries that Plaintiffs identify appear to be "generally available grievance[s] about government [] claiming only harm to [their] and every citizen's interest in the proper application of the Constitution and laws," which are not adequate to confer standing. *Lance v. Coffman*, 549 U.S. 437, 439 (2007) (quoting *Lujan*, 504 U.S. at 573–74). The Amended Complaint in *Ellis* alleges that the IRS has injured Plaintiffs only in the most conclusory terms, stating, for example, that the "institutionalized scheme to fabricate evidence concerning Plaintiffs has adversely affected them," *Ellis* Am. Compl., ¶ 86 (emphasis omitted), and that the federal government's crimes have "damage[d] the Class which includes Plaintiffs," *Ellis* Am. Compl., ¶ 87. But "nondescript and conclusory allegations of injury are not the type of general factual allegations from which the Court may presume the specific facts necessary to ensure that the plaintiff has standing, and are insufficient to meet the plaintiff's burden of alleging an injury in fact that is concrete and particularized." *Brown v. F.B.I.*, 793 F. Supp. 2d 368, 374 (D.D.C. 2011) (quoting *Wright v. McPhie*, No. 04–cv–1204, 2005 WL 3273556, at *3 (D.D.C. Sept. 27, 2005)). The Amended Complaint in *Stanley* recites violations of "all Americans' exercise of their protected Fifth Amendment right," *Stanley* Am. Compl., ¶ 86, and characterizes the IRS scheme as "a conscience-shocking, equity-invoking violation of the substantive due process rights of Plaintiffs and all Americans," *Stanley* Am. Compl., ¶ 83. This type of general allegation "does not state an Article III case or controversy." *Lance*, 549 U.S. at 439 (quoting *Lujan*, 504 U.S. at 561); *see also Ellis*, 67 F. Supp. 3d at 335 (amorphous or generalized injuries do not provide basis for standing).

To be sure, each complaint includes some more specific allegations of harm. The *Ellis* Amended Complaint asserts that various federal judges and attorneys from the Department of Justice have colluded to dismiss prior complaints brought by Plaintiffs. *Ellis* Am. Compl., ¶¶ 39–53. The *Stanley* Amended Complaint claims that falsified IRS records caused Mr. Stanley to be convicted and incarcerated and resulted in the theft of $45,000 from Mr. Ellis. *Stanley* Am. Compl., ¶¶ 48-49. However, the "forward-looking" relief that they seek—primarily injunctions prohibiting the IRS and Department of Justice from "bypassing the rights of individuals in connection with 'income taxes,'" including engaging in the alleged falsification scheme, concealing its existence, and using falsified documents in court, *Ellis* Am. Compl., ¶¶ 108, 110–11; *Stanley* Am. Compl., ¶ 98, or judicial declarations asserting that Plaintiffs' allegations of past misconduct by Defendants are true, *Ellis* Am. Compl., ¶¶ 99–107; *Stanley* Am. Compl., ¶¶ 90–94—will not redress the injuries they have identified.[5] *See, e.g.*, *Ellis*, 67 F. Supp. 3d at 335, 337 (where plaintiff requests "only forward-looking relief . . . past injuries cannot serve as a basis on which he has standing to bring claims"; such forward-looking relief "do[es] not remedy past harms"); *see also Dearth v. Holder*, 641 F.3d 499, 501 (D.C. Cir. 2011) ("[W]here the plaintiffs seek declaratory and injunctive relief, past injuries alone are insufficient to establish standing."); *Nat'l Wildlife Fed'n v. U.S. Army Corps of Engineers*, 170 F. Supp. 3d 6, 14 (D.D.C. 2016) (finding no standing where requested declaratory and injunctive relief would not redress past harms alleged in complaint); *Radack v. U.S. Dept. of Justice*, Civ. Act. No. 04-1881, 2006 WL 2024978, at *4 (D.D.C. July 17, 2006) (plaintiff lacked standing where request for injunction "appear[ed] to . . . be based on a generalized desire for vindication").

[5] Even the single request for relief that seeks monetary remuneration, which appears in the *Ellis* Amended Complaint, is not tied to any damages suffered by Plaintiffs. *Ellis* Am. Compl., ¶ 117–118. The *Ellis* Amended Complaint alleges no monetary damages. Instead, it seeks creation of a trust fund from money exacted from the Department of Justice Defendants and tied to the number of misrepresentations they made in court documents.

The *Ellis* Amended Complaint includes allegations against the Judicial Defendants in connection with actions taken by the individual judges in this case and the other, similar cases filed in this District. For example, that Complaint dwells on Judge Jackson's allegedly false summary of the allegations in *Ellis v. Commissioner of Internal Revenue Service*, 67 F. Supp. 3d 325 (D.D.C. 2014). *Ellis* Am. Compl., ¶¶ 39–44. This misstatement assertedly led not only to the dismissal of that case, *id.*, ¶¶ 45–46, but also to its affirmance on appeal, *id.*, ¶¶50–52, the dismissals of other, related cases that relied on Judge Jackson's opinion, *id,* ¶¶ 66-69c, 71, 74–75, and the expected dismissal of this case, Def. Opp. at 3–4. The *Ellis* Amended Complaint does not explicitly seek any remedy in relation to these allegations.[6] However, to the extent that the Complaint can be read to seek declaratory or injunctive relief against the Judicial Defendants aimed toward correcting alleged misstatements or legally-flawed decisions, it is, again, defective, as any such claims would not be redressable in these actions. "This Court is not a 'reviewing court and cannot compel . . . Article III judges in this or other districts or circuits to act." *Thomas v. Wilkins*, 61 F. Supp. 3d 13, 20 (D.D.C. 2014) (quoting *Sibley v. U.S. Supreme Court*, 786 F. Supp. 2d 338, 345 (D.D.C. 2011). Moreover, "[d]eclaratory relief against a judge for final actions taken within his or her judicial capacity is . . . available by way of direct appeal of the judge's order." *Id.* (alteration in original) (quoting *Jenkins v. Kerry*, 928 F. Supp. 2d 122, 135 (D.D.C. 2013)). "Simply stated, neither the public interest, nor the interests in practical judicial administration, would be served by a federal court reviewing the decisions of our local judicial officers who are acting pursuant to their judicial authority." *Id.* at 21 (quoting *Hoai v. Superior Court*, 539 F. Supp. 2d 432, 435

[6] The only mention of any Judicial Defendant in the section of the Amended Complaint demanding relief is a request for "the Court to visit [Judge] Cooper's chambers" to view a document that Plaintiffs attempted to file in *Crumpacker v. Ciraolo-Klepper* (one of the eleven previously dismissed cases mentioned above), apparently to provide evidence of the Judicial Defendants' participation in the alleged conspiracy to dismiss that action. *Ellis* Am. Compl., ¶ 115.

(D.D.C.2008)). Any claims against the Judicial Defendants would not be redressed by a favorable decision, and Plaintiffs therefore lack standing to bring them. The undersigned accordingly recommends dismissing these actions for lack of standing. [7]

*3. Frivolous Claims*

A federal court lacks jurisdiction over claims that are "so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as to not involve a federal controversy." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998); *see also Walsh v. Hagee*, 900 F. Supp. 2d 51, 58 (D.D.C. 2012) ("District courts lack jurisdiction when the plaintiff's complaint is '"patently insubstantial," presenting no federal question suitable for decision.'" (quoting *Best v. Kelly*, 39 F.3d 328, 330 (D.C. Cir. 1994); *Crisafi v. Holland*, 655 F.2d 1305, 1307–08 (D.C. Cir.1981) ("A court may dismiss as frivolous complaints . . . postulating events and circumstances of a wholly fanciful kind.").

Here, Plaintiffs hypothesize a vast conspiracy among IRS employees, attorneys for the federal government, federal judicial officers, and the highest-level executive branch officers. The object of the conspiracy is purportedly to perpetrate a fraud by which non-filers are illegally assessed income taxes and to conceal that fraud from the public. These allegations are sufficiently "attenuated and unsubstantial [so] as to be absolutely devoid of merit." *Hagans v. Lavine*, 415 U.S. 528, 536–37 (1974) (quoting *Newburyport Water Co. v. City of Newburyport*, 193 U.S. 561, 579 (1904)); *see also Douglas v. United States*, 324 F. App'x 320, 321 (5th Cir. 2009) (stating that "argument that IRS committed 'fraud' by filling out returns on [plaintiff's] behalf . . . is frivolous," and that claim that plaintiff's refusal to volunteer to pay income tax absolves him of responsibility

[7] In any event, judges acting in their judicial capacity, as here, are, of course, absolutely immune from actions for damages. *See, e.g.*, *Mireles v. Waco*, 502 U.S. 9, 9 (1991) (per curiam) ("A long line of this Court's precedents acknowledges that, generally, a judge is immune from a suit for money damages.").

to do so is legally unsupportable); *Walsh v. Hagee*, 900 F. Supp. 2d 51, 58 (D.D.C. 2012) (collecting cases dismissed for lack of jurisdiction for alleging "bizarre conspiracy theories"). Indeed, as noted above, four different judges in this District have dismissed eleven similar cases at the pleading stage for lack of jurisdiction. Moreover, Judge Cooper has recognized that Mr. Ellis' and Mr. McNeil's "repeated filings of meritless complaints in this district is vexatious [and] harassing," and merits a "nationwide pre-filing injunction." Mem. Op., *Crumpacker v. Ciraolo-Klepper*, 16-cv-01053 (CRC) [Dkt. 43], at *7 (D.D.C. April 19, 2017). In these circumstances, the undersigned recommends dismissing these Complaints for lack of jurisdiction as frivolous.

**C. Other Pending Motions**

On May 10, 2017, Plaintiffs filed a motion styled "Motion to Judge Sullivan for Continuance of Magistrate Order Setting Response Date." Motion, *Stanley v. Lynch*, No. 17-cv-22 (D.D.C. May 10, 2017) ("Continuance Motion") [Dkt. 20]. The Continuance Motion sought an extension of time for Plaintiffs to respond to Defendants' Motion to Dismiss in light of Plaintiffs' request that Judge Sullivan vacate the referral of the case to the undersigned. An identical motion was denied in *Ellis v. Jackson* on May 31, 2017, well after these two cases were consolidated on April 12, 2017. Order, *Ellis v. Jackson*, 16-cv-2313 (D.D.C. May 31, 2017) [Dkt. 13]. Moreover, the Continuance Motion was mooted when Judge Sullivan denied Plaintiffs' request to vacate the reference on July 27, 2017. Order, *Ellis v. Jackson*, 16-cv-2313 (D.D.C. July 27, 2017) ("July 27 Order") [Dkt. 14]. The undersigned therefore recommends the motion be denied as moot.

On August 7, 2017, Plaintiffs filed a motion that seeks certification for an interlocutory appeal of Judge Sullivan's July 27 Order. Plaintiffs' Appeal, *Ellis v. Jackson*, 16-cv-2313 (D.D.C. Aug. 7, 2017) ("Pl. Appeal") [Dkt. 15]. That Order had also denied Plaintiffs' request to correct six alleged misstatements in the undersigned's prior order consolidating these cases. July 27 Order

at 3-4. A district court "may in its discretion certify an order for interlocutory appeal when: (1) the order involves a controlling question of law, (2) as to which a substantial ground for difference of opinion concerning the ruling exists, and (3) an immediate appeal would materially advance the disposition of the litigation." *Vila v. Inter-Am. Inv., Corp.*, 596 F. Supp. 2d 28, 30 (D.D.C. 2009). As Plaintiffs make clear, the ruling for which they seek certification denied Plaintiffs' request to correct "deliberate misrepresentations" in the order consolidating these cases. Pl. Appeal at 4. The underlying motion did not challenge the consolidation, itself, which Plaintiffs did not contest. *Id.* That is, the branch of the motion Plaintiffs assert was wrongly decided did not seek any cognizable remedy. Plaintiffs cannot, therefore, meet any of the requirements for certification, and the undersigned recommends denying this motion.

On August 11, 2017, Plaintiffs filed a Motion to Recuse both the undersigned and Judge Sullivan. Motion to Recuse, *Ellis v. Jackson*, 16-cv-2313 (D.D.C. Aug. 11, 2017) ("Recusal Motion") [Dkt. 17]. Plaintiffs assert that they have been deprived of their right to neutral judges, and complain of certain prior rulings in these cases. Recusal Motion at 1. However, "[j]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States,* 510 U.S. 540 (1994). The motion as to the undersigned is therefore denied. *See United States v. Miller*, 355 F. Supp. 2d 404, 405 (D.D.C. 2005) ("The judge who is the object of the recusal motion rules on the motion."). Moreover, as these cases have been transferred from Judge Sullivan to Judge Kelly, the request for Judge Sullivan's recusal is moot. The undersigned therefore recommends denying the motion as to Judge Sullivan.

Finally, eleven would-be plaintiffs have filed motions for permissive joinder. As the undersigned recommends granting Defendants' motion to dismiss, the motions for joinder should be

denied as moot. *See, e.g.*, *Ellis*, 67 F. Supp. 3d at 328 n.4 (denying as moot motions for joinder in light of dismissal for lack of jurisdiction).

**CONCLUSION**

For the reasons stated above, the undersigned **RECOMMENDS** that the Court **GRANT** Defendants' motion to dismiss. Further, the undersigned **RECOMMENDS** that the Court **DENY** Plaintiffs' remaining motions and **DENY AS MOOT** Movants' motions for permissive joinder. The motion for recusal of the undersigned is **DENIED**.

* * * * *

The parties are hereby advised that under the provisions of Local Rule 72.3(b) of the United States District Court for the District of Columbia, any party who objects to the Report and Recommendation must file a written objection thereto with the Clerk of this Court within 14 days of the party's receipt of this Report and Recommendation. The written objections must specifically identify the portion of the report and/or recommendation to which objection is made, and the basis for such objections. The parties are further advised that failure to file timely objections to the findings and recommendations set forth in this report may waive their right of appeal from an order of the District Court that adopts such findings and recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985).

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Date: November 1, 2017

G. MICHAEL HARVEY
UNITED STATES MAGISTRATE JUDGE