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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

In Re:	**Case No. 2:26-cv-05207-ODW-E**
GUSTAVO ESCAMILLA, an individual **Petitioner,**	**PETITIONER'S MOTION TO RECUSE UNDER 28 U.S.C. §§ 144, 455(a), AND 455(b)(1); MEMORANDUM OF POINTS AND AUTHORITIES**
UNITED STATES OF AMERICA, THROUGH THE UNITED STATES ATTORNEY'S OFFICE FOR THE CENTRAL DISTRICT OF CALIFORNIA, **Real Party in Interest,**	**[CRIME VICTIMS' RIGHTS ACT; EXPEDITED CONSIDERATION REQUESTED PURSUANT TO 18 U.S.C. § 3771(d)(3)]**

TO THE HONORABLE COURT AND ALL PARTIES:

Petitioner Gustavo Escamilla respectfully moves, under 28 U.S.C. §§ 144, 455(a), and 455(b)(1), for the recusal of the Honorable Otis D. Wright II from this action. This Motion is based on the following Memorandum, the record in this action and in the related dockets, and such further argument as the Court may permit.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Motion presents two related grounds, each established by the documentary record, that together warrant recusal.

First, this action — a petition under the Crime Victims' Rights Act — was transferred to the calendar of Judge Wright by a transfer order that related it to *Escamilla v. Department of Homeland Security*, No. 2:17-cv-07748-ODW (the "2017 action"), a civil-rights lawsuit against DHS officials filed under a different statutory framework (42 U.S.C. § 1983 and the Federal Tort Claims Act ("FTCA")), which Judge Wright dismissed with prejudice and without leave to amend for "lack of subject matter jurisdiction" in 2018. Judge Wright later dismissed Petitioner's separate 2021 Crime Victims' Rights Act petition (No. 2:21-cv-01910) — a self-executing victim's-rights enforcement action under 18 U.S.C. § 3771, in which the government filed NO responsive pleading and made NO appearance — *sua sponte*, by reaffirming that same 2018 jurisdictional ruling. The Petition documents the resulting contradiction between the two Orders as internally inconsistent and contradictory. Petitioner's own Notice of Related Cases, however, designated a different related case entirely.

///

Second, and independently, Judge Wright's recusal is warranted under § 455(a) because his impartiality might reasonably be questioned where he is now assigned to preside over a victim's rights enforcement Petition premised on facts that his own two orders addressed — orders that, as shown below, are internally contradictory on the dispositive question in this case.

The Petition does not ask this Court to vacate the 2018 or 2021 orders; it is an independent statutory enforcement matter. But its viability turns on the very question those orders addressed, and it documents that the 2021 order contradicted the 2018 order on that question.

II. THE DOCUMENTED RECORD

A. Petitioner's Notice of Related Cases Designated Case No. 2:20-CR-00346(B)-DMG - The McCormick Criminal Action

On May 14, 2026, concurrently with the Petition, Petitioner filed a Notice of Related Cases (Dkt. 4) under Local Rule 83-1.3 and General Order 08-05. That Notice designated *United States v. McCormick*, No. 2:20-CR-00346(B)-DMG (C.D. Cal.), before the Honorable Chief Judge Dolly M. Gee, as the related case.

The designation rests on the basis stated in Petitioner's Notice of Related Cases: under Local Rule 83-1.3.1, the same USAO-CDCA leadership officials whose documented institutional conduct gives rise to this Petition — including **Nicola T. Hanna and Tracy L. Wilkison** — also appeared in the McCormick

prosecution, such that the two (2) matters would entail a substantial duplication of labor if heard by different judges. Petitioner did not designate the 2017 civil-rights action against DHS officials as the related case.

B. This CVRA/MVRA Petition Under 18 U.S.C. §§ 3771 And 3663A–3664 Was Related To — And Routed To Judge Wright On The Basis Of — A 2017 42 U.S.C § 1983 Civil Rights And FTCA Action Arising Under An Entirely Different Statutory Framework.

On May 22, 2026, an Order Re Transfer (Related Cases) (Form CV-34) was entered relating this action to No. 2:17-cv-07748-ODW-MRWx — not to No. 2:20-CR-00346(B)-DMG McCormick action Petitioner designated — and Judge Wright signed the "Consent" block accepting transfer to his calendar. The case number was changed accordingly. The Clerk does not appear to have prepared the proposed transfer order to Chief Judge Gee that Section 5.2 *requires* upon the filing of Petitioner's Notice of Related Cases, and Chief Judge Gee — the judge of the designated first-filed case — appears to have neither reviewed, approved, nor declined any transfer.

The 2017 action to which this Petition was related was a civil-rights action brought under 42 U.S.C. § 1983 and the Federal Tort Claims Act — which was **NOT** a self-executing victim's rights enforcement action, under to the Crime Victims' Rights Act, 18 U.S.C. § 3771, and the Mandatory Victims Restitution Act, § 3664(d)(5).

Petitioner designated No. 2:20-CR-00346(B)-DMG the McCormick proceeding before Chief Judge Gee because it is the live matter in which the same USAO-CDCA supervisory officials appear — and because the alternative, Petitioner's 2021 Crime Victims' Rights Act proceeding, was one in which the Government neither appeared nor filed any responsive pleading, and which Judge Wright dismissed *sua sponte* for lack of subject-matter jurisdiction.

Judge Wright dismissed Petitioner's civil rights lawsuit against DHS officials, the 2017 action on April 4, 2018, for lack of subject-matter jurisdiction; that dismissal neither adjudicated ***nor*** could have adjudicated Petitioner's crime-victim status, which arises from the victim's involvement in federal criminal proceedings against the Operation Software Slashers, DHS officials represented the alleged ringleaders were indicted in the Western District of Missouri — a district and a set of proceedings in which Judge Wright had **no** involvement and over which he exercised **no** subject matter jurisdiction.

The connection among these matters is instead the documented government misconduct that runs through them. USAO-CDCA officials — including former U.S. Attorney Nicola Hanna, and in the July and October 2021 filings then-Acting U.S. Attorney Tracy Wilkison — republished and mischaracterized a purported August 17, 2015, Colorado ruling against Greenway that does not exist. The actual ruling, entered March 31, 2015, was the opposite: Chief Judge Krieger sustained

Greenway's trademark-infringement claims and found a prima facie showing of personal jurisdiction over the defendants, including the individual identified as the mastermind of Operation Software Slashers, David Selakovic. It is those same supervisory officials — Hanna and Wilkison — on whose appearances Petitioner's Notice of Related Cases designated the McCormick proceeding as related.

C. Judge Wright's April 4, 2018, Order Recognized DHS's Criminal-Investigation Facts In Detail.

In the April 4, 2018, Order dismissing the 2017 action (Dkt. 13, at 2, Page ID #:210), Judge Wright's own Factual Background recited that, at the March 3, 2015 meeting, ICE Operations Manager Gibson "**explained to Plaintiffs that the Greenway investor defendants … had already been subject to extensive investigation for criminal trademark infringement**"; that "**ICE and the United States Attorney's Office had recovered over $26 million in the investigation**"; that Plaintiffs "**may be able to recover from an established victims' fund**"; and that "**the Kansas City U.S. Attorney's Office for the Western District of Missouri ('USAO-MO') agreed that Greenway would be added as a victim in the government's case.**" The Order thus set out, in detail, DHS's criminal investigation and the government's agreement to treat Greenway as a victim in its Western District of Missouri case.

D. Notwithstanding Having Previously Reviewed Email Communications From ICE Operations Manager Gibson To Petitioner, Conferring Victim Status, And Having Recognized DHS' Criminal Investigation, Judge Wright's April 2, 2021, Order "Failed To Recall The Existence of ANY" Criminal Proceedings, And Accused The Victims of Engaging In "Speculation Pulled From The Ether"

On April 2, 2021, ruling on Petitioner's Crime Victims' Rights Act petition, Judge Wright found that "while plaintiffs claim to be victims in an on-going criminal proceeding, they failed to specifically identify a criminal proceeding supporting their claim," and that the pleading "fails to (1) identify the existence of **any** criminal proceeding that would grant Plaintiff rights; or (2) allege facts suggesting that the underlying crimes occurred in this District; (3) accused the victims of "engaging in speculation pulled from the ether.'

The Order reaffirmed the April 4, 2018, dismissal, as the underlying legal basis to dismiss Petitioner's 2021 CVRA enforcement action *sua-sponte*. Noting that his Court "lacked subject matter jurisdiction" over Petitioner's 2017 civil rights lawsuit under an entirely statutory framework, 42 U.S.C. § 1983 and the Federal Tort Claims Act.

Whose ruling in Petitioner's 2017 civil-rights lawsuit, Petitioner asserts, rested on USAO-CDCA officials — led by then-U.S. Attorney Nicola T. Hanna — who, in the government's January 29, 2018, motion to dismiss, republished and mischaracterized a purported August 17, 2015, court ruling against Greenway and

in favor of Selakovic. No such ruling exists. On March 31, 2015, Chief Judge Marcia S. Krieger had ruled the opposite — in Greenway's favor and against Selakovic — sustaining Greenway's trademark-infringement claims. *Greenway Nutrients, Inc. v. Blackburn*, No. 1:13-cv-01088-MSK-KMT (D. Colo. Mar. 31, 2015). Petitioner further asserts the government supplied the court with materially false and misleading pleadings and declarations during the 2017 lawsuit.

III. THE TWO ORDERS ARE INTERNALLY CONTRADICTORY ON THE DISPOSITIVE QUESTION

The dispositive question in a Crime Victims' Rights Act matter of this kind is the existence of the federal criminal proceeding from which victim status arises.

On that precise question, the two orders cannot be reconciled. The 2018 Order recited, as the factual predicate, the "**extensive investigation for criminal trademark infringement**," the **$26 million recovery**, the "**established victims' fund**," and the USAO-MO's agreement to add Greenway "**as a victim in the government's case**."

The 2021 Order then held that Petitioner "**failed to … identify the existence of any criminal proceeding that would grant Plaintiff rights**."

The same judge, addressing the same record, first described DHS's criminal investigation and the government's victim-designation in detail, and later failed to

recall the existence of **any** criminal proceedings that would grant Petitioner victim's rights, proceeded to falsely accused the victim/Petitioner of "engaging in speculation pulled from the ether."

Petitioner does not, by this Motion, ask the Court to resolve the merits of that contradiction; that is the subject of separate proceedings. Petitioner identifies it here for the limited and specific purpose of the recusal analysis: it is the documented fact that most directly bears on whether a reasonable observer would question the **impartiality of the judge now assigned**, once again, to preside over the Petitioner Escamilla's Petition.

IV. THE NUMEROUS DOCUMENTED ACTS OF ALLEGED MISCONDUCT WAS PLACED BEFORE THE JUDGE FIVE (5) TIMES OVER A SEVEN (7) MONTH TME SPAN AND DISPOSED OF WITHOUT BEING ADDRESSED

Beyond the internal contradiction between the two Orders, the record reflects that the same documented information was placed before Judge Wright five (5) times over approximately seven (7) months — on March 29, July 12, September 18, October 18, and November 1, 2021 — and that on two (2) of those occasions the matter was disposed of *sua sponte*, on the court's own initiative, without the documented material being addressed on its merits. On the remaining

occasions, including after the government's October 25, 2021, opposition (Dkt. 23), the government denied none of the documented misconduct on the merits.

Petitioner recounts these instances not to adjudicate attorney or judicial misconduct here — those questions lie elsewhere — but because they are objective, record-verifiable facts bearing on whether a reasonable observer would question the impartiality of the judge now assigned to preside over a Petition premised on facts those same dispositions addressed.

First (March 29, 2021, Dkt. 9). In the briefing on the question then before the court, counsel of record filed a response to the order to show cause placing the numerous instances of documented alleged attorney misconduct before the court under a dedicated heading stating that "**U.S. Attorneys provided this Court with a fabricated narrative and filed false and materially misleading declarations and pleadings**," naming the attorneys and quoting their filings.

Second (April 2, 2021). The government made NO appearance and did **NOT** file any responsive pleadings to contest those allegations; the court dismissed the victims petition *sua sponte* on a preclusion ground drawn from its earlier April 4, 2018, order, (42 U.S.C. § 1983 and FTCA framework - lack of subject matter jurisdiction) without ever addressing the uncontested information.

Third (July 12, 2021, Dkt. 14 & 14-1). Petitioner, through counsel, again placed the same documented acts of alleged misconduct allegations and information before the court and quoted to it the operative text of the governing judicial-conduct canon, and expressly noticed the forthcoming Rule 60(d)(3) motion.

That same filing — a motion to disqualify Judge Wright— raised the appearance-of-partiality concern under 28 U.S.C. § 455(a) then, including as to the court's characterization of DHS advising Petitioner and his business partner, that the governments sealed-indictment of the primary bad actors in Petitioner's criminal case occurred in the Western District of Missouri, as "**speculation pulled from the ether**." Even though Judge Wright was not present during DHS officials March 2015 recorded face-to-face interview with Petitioner Escamilla and his and his business partner, who made that representation. **Nor** did he preside over and was in **no** way involved with DHS's criminal investigation or Operation Software Slashers' criminal proceedings.

Fourth (September 18–20, 2021, Dkts. 18, 20). Counsel filed a Rule 60(d)(3) fraud-on-the-court motion documenting the same allegations of USAO-CDCA attorney misconduct information; the court struck it "**for failure to comply with Local Rule 7-3**" (meet-and-confer). Counsel then contacted the United States Attorney's Office on September 21, 2021, to meet-and-confer and, per his sworn

declaration, "initiated the process and followed up after two weeks of no response" before refiling (Dkt. 24, D'Attaray Decl. ¶ 2). The sole stated meet-and-confer impediment was thus cured by the movant's documented good-faith efforts and defaulted by the government — which, as counsel of record in the action since January 29, 2018, was electronically served with the Rule 60(d)(3) motion through the Court's CM/ECF system when it was filed on September 18, 2021, nearly a month before counsel refiled on October 18, 2021, and which identifies no prejudice from the timing.

Fifth (October 18–November 1, 2021, Dkts. 21, 23, 24). Having cured the Local Rule 7-3 meet-and-confer objection, counsel refiled the motion (Dkt. 21). The government's opposition (Dkt. 23) rested on procedural grounds (meet-and-confer and page length) and denied none of the multiple documented acts of alleged misconduct on the merits.

As to the Local Rule 7-3 meet-and-confer, the government's own account was internally inconsistent: while Assistant U.S. Attorney Finn's declaration asserted he had emailed counsel on October 4 and 5, 2021, the government's own record reflects that Assistant U.S. Attorney Park apologized for having failed to forward counsel's September 21, 2021 request — which sat undelivered until October 4 — and then, on October 5, AUSA Park asked victim's counsel whether he had yet heard from her superiors AUSA's Cuff and Osinoff. An inquiry difficult

to reconcile with the claim that AUSA Finn's alleged October 4 and 5, 2021, contact had already been made.

Counsel's sworn declaration further stated that his office had **NO** record of **any** email from AUSA Finn (Dkt. 24, D'Attaray Decl. ¶¶ 2, 4). Counsel's reply (Dkt. 24), subject to Rule 11 and supported by a sworn declaration and email exhibits, certified that it was the **government that had failed to confer**. The matter was again disposed of *sua sponte* on the same **Local Rule 7-3 meet-and-confer** ground the movant had cured and the government had defaulted, without the record reflecting that this sworn contradiction was ever examined or resolved.

For the recusal inquiry, the significance of this sequence is objective and does not depend on characterizing any disposition as *right* or *wrong*: the same documented information was placed before this judge on five (5) separate occasions over approximately seven (7) months — on March 29, July 12, September 18, October 18, and November 1, 2021 — and was twice dismissed on the court's own initiative (on April 2, 2021, and by the September 20, 2021 order striking the motion); the governing standard was quoted to him by name **"Local Rule 7-3" (meet-and-confer)**, and the sole procedural objection ever raised was cured by the movant and defaulted by the government — and the information was **not** addressed. A reasonable observer aware of this history, and of the fact that this judge is now assigned once more to preside over the Petition challenging these

very five (5) separate dispositions over a seven (7) month time frame, would question his impartiality.

V. THE FACTS ARE SWORN, OF RECORD, AND UNDENIED ON THE MERITS ACROSS SUCCESSIVE GOVERNMENT FILINGS

The matters set out above are ***not new*** or speculative. They were placed before this Court under penalty of perjury in the Declaration of Gustavo Escamilla filed July 12, 2021, (No. 2:17-cv-07748, Dkt. 14-1, Page ID #:251–319), submitted as an affidavit under 28 U.S.C. § 144 in support of Petitioner's then-motion to disqualify.

Petitioner filed a formal civil-rights complaint with DHS's Office for Civil Rights and Civil Liberties (DHS-CRCL) on May 1, 2017, to exhaust his administrative remedies, and transmitted it to more than twenty (20) named DHS and DOJ officials, including USAO-CDCA's Tracy L. Wilkison; DHS-CRCL acknowledged the complaint and, on May 2, 2017, DHS-CRCL advised Petitioner it lacked jurisdiction over his allegations.

In support of dismissal, the United States submitted the declaration of Robert A. Ramey (Dkt. 9-1), representing that ICE had **no** record of a formal complaint. Judge Wright's April 4, 2018, Order relied on that representation to find that Petitioner "fail[ed] to establish that they exhausted their administrative

remedies," and dismissed the FTCA claims for lack of jurisdiction on that basis (Dkt. 13, at 10–11).

When Petitioner first raised these matters, the Government's July 19, 2021, opposition (Dkt. 15, Page ID #:319–324), led by former Acting U.S. Attorney Tracy L. Wilkison, signed for the Government by Assistant United States Attorney Grace Y. Park, did not deny the multiple instances of underlying factual allegations on the merits.

As to the sealed-indictment contradiction, the July 19, 2021, opposition addressed only a narrowed "secret plea agreement or deferred prosecution agreement" formulation (Dkt. 15 at 4), and did not deny that the Court's own April 4, 2018, Order had recited the very criminal investigation the April 2, 2021, Order characterized as "speculation pulled from the ether."

USAO-CDCA's July 19, 2021, opposition's assertion that the two orders are "consistent" cannot be reconciled with their text: the 2018 Order's recitation of DHS' criminal investigation and the Government's agreement to treat Petitioner Escamilla's company Greenway as a victim in its case cannot be squared with the 2021 Order's finding that the federal crime victim/Petitioner "**failed to … identify the existence of any criminal proceeding.**"

That July 19, 2021, non-denial was followed by the same **tacit non-denial** in USAO-CDCA's, October 25, 2021, opposition (Dkt. 23), which rested on the formulation that, "**assuming arguendo**" a fraud on the court existed, it "**would not 'affect the outcome of the case.'**"

Across two successive filings, the Government declined to deny the numerous instances of documented misconduct allegations on the merits. For the limited purpose of this Motion, the significance is narrow and objective: the facts bearing on the recusal inquiry are **sworn, of record, and undenied — not speculative** — and a reasonable observer would weigh them as such.

This matter proceeds under the Crime Victims' Rights Act, which directs the Court to "take up and decide any motion asserting a victim's right forthwith," 18 U.S.C. § 3771(d)(3) — a posture that displaces ordinary civil hearing-and-notice timing. This Motion is properly before the Court.

VI. RECUSAL IS WARRANTED UNDER 28 U.S.C. § 455(a)

Section 455(a) provides that a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The standard is objective: whether a reasonable person, knowing all the facts, would harbor doubts about the judge's impartiality. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988); *United States v. Holland*, 519 F.3d 909, 913 (9th

Cir. 2008); *Clemens v. U.S. Dist. Court*, 428 F.3d 1175, 1178 (9th Cir. 2005); *United States v. Nelson*, 718 F.2d 315, 321 (9th Cir. 1983).

Recusal does **not** require proof of actual bias; **the appearance of partiality is sufficient**, because the statute is concerned with preserving public confidence in the judiciary. *Liljeberg*, 486 U.S. at 860. What matters is "not the reality of bias or prejudice but its appearance." *Liteky v. United States*, 510 U.S. 540, 548 (1994). A litigant is entitled to "a fair trial in a fair tribunal … before a judge with no actual bias," *Bracy v. Gramley*, 520 U.S. 899, 904–05 (1997), and "justice must satisfy the appearance of justice," *Offutt v. United States*, 348 U.S. 11, 14 (1954).

On July 19, 2021, USAO-CDCA attorneys, included Grace Y. Park (who in January – February 2018, the later victim's asserted, supplied the Court with a false sworn declaration under penalty of perjury, via a false "Ryan" surname substitution and narrative, appeared for the government in defense of DHS officials, during Petitioners 2017 civil rights lawsuit) led by Tracy L Wilkison, and invoked *Liteky* to argue that ordinary "**expressions of impatience, dissatisfaction, annoyance, and even anger**" do not require disqualification.

Regarding Judge Wright accusing the victims of engaging in "speculation pulled from the ether" regarding DHS officials advising Petitioner and his business partner that indictments of against OSS' primary bad actors and ringleaders were

filed under seal. That principle is **not** in dispute, and it does **not** control here. *Liteky* holds that judicial remarks support disqualification when they reflect "such a high degree of favoritism or antagonism as to make fair judgment impossible," or an "unfavorable predisposition … so extreme as to display clear inability to render fair judgment." *Id.* at 551, 555.

The circumstance here is not a stray expression of annoyance; it is a documented, internal contradiction between the same judge's two (2) contradictory orders on the dispositive question, coupled with the routing of this Petition — which is premised on the very facts those orders addressed — back to that judge on a relatedness theory Petitioner did not designate and disclaimed. That is the appearance *Liteky* leaves open, **not** the ordinary judicial friction it places off-limits.

Here, the objective circumstances — taken from the record, without any need to attribute motive — would cause a reasonable observer to question the assigned judge's impartiality: (1) this Petition is premised on facts the same judge's 2018 and 2021 orders addressed for 'lack of subject matter jurisdiction," and documents that those orders are contradictory on the dispositive question; (2) those two orders are, on their face, internally contradictory on the dispositive victim-rights-status question; and (3) the same documented information was placed before that judge repeatedly, the governing standard was quoted to him by name, and the sole procedural meet-and-confer objection was cured by the movant and

defaulted by the government, yet the information was not addressed; and (4) the Petition was routed to that judge by a transfer order relating it to his own prior civil rights case filed under an entirely different statutorily framework 42 U.S.C § 1983 and the Federal Tort Claims Act — a case Petitioner did not designate as related, and expressly disclaimed — rather than to the case Petitioner designated, and the **mandatory** related-case determination that General Order 08-05, § 5.2 vested in the judge of the designated case (Chief Judge Gee) does not appear to have ever been made.

The Code of Conduct for United States Judges recognizes that public confidence in the judiciary's impartiality is promoted when a judge takes appropriate action upon receipt of reliable information indicating the likelihood that a lawyer violated applicable rules of professional conduct. Canon 3B(6). Where such information was placed before the same Court on five (5) separate occasions over an approximate seventh (7) month span and the record does not reflect that it was addressed, that circumstance bears on the reasonable-observer analysis under § 455(a).

A judge asked to preside over a Petition premised on the very question his own contradictory orders addressed, in these circumstances — where the **mandatory** procedure that would have routed the relatedness question to a

different judge was not followed, and the action instead came to rest before him — presents precisely the appearance-of-partiality concern § 455(a) addresses.

The inquiry does **not** turn on any judge's intent; it turns on what a reasonable observer, aware of these objective facts, would conclude. That a Notice of related Cases which named the Honorable Chief Judge Gee Case No. 2:20-CR-00346(B)-DMG in the McCormick matter, squarely presents the same related-case designation only underscores that this action's placement before Judge Wright rests on a relatedness theory Petitioner never advanced.

VII. RECUSAL IS INDEPENDENTLY REQUIRED UNDER 28 U.S.C. §§ 144 AND 455(b)(1)

Beyond the appearance standard of § 455(a), recusal is independently required under 28 U.S.C. §§ 144 and 455(b)(1), which mandate disqualification where a judge "**has a personal bias or prejudice concerning a party**."

The test for personal bias under § 144 is identical to that under § 455(b)(1), and decisions construing § 144 control the interpretation of § 455(b)(1). *United States v. Sibla*, 624 F.2d 864, 867 (9th Cir. 1980); *United States v. Olander*, 584 F.2d 876, 882 (9th Cir. 1978). Section 144 provides that upon the filing of "a timely and sufficient affidavit that the judge … has a personal bias or prejudice," the judge "shall proceed **no** further therein, but another judge shall be assigned."

When the facts in a § 144 affidavit are assessed, they are taken as true, *Berger v. United States*, 255 U.S. 22, 33–34 (1921); and if the affidavit is legally sufficient on its face, the motion must be referred to another judge for determination of its merits, *Sibla*, 624 F.2d at 868.

While opinions formed during prior proceedings ordinarily do not supply a basis for disqualification, they do so where they reflect "such a high degree of favoritism or antagonism as to make fair judgment impossible." *Liteky v. United States*, 510 U.S. 540, 555 (1994).

That standard is met on the facts sworn in the accompanying affidavit: the same judge who recited DHS's criminal investigation and the Government's victim-designation in his April 4, 2018, Order — the recited-then-denied contradiction set out above — later found, in his April 2, 2021 Order, that Petitioner "failed to … identify the existence of any criminal proceeding" and characterized the victim's sworn account of the sealed Western District of Missouri prosecution as "speculation pulled from the ether."

A determination by a federal judge on the public records that an innocent and emotionally traumatized Mexican-American small businessman and federal crime victim would fabricate facts that the same judge had earlier recited as record reflects a predisposition of the character §§ 144 and 455(b)(1) address.

Because the accompanying affidavit is timely — filed promptly upon the misrouting of this action to Judge Wright — and sufficient on its face, the appropriate course under § 144 is referral of this Motion to another judge for determination. *Sibla*, 624 F.2d at 868.

VIII. THIS ACTION WAS ROUTED TO JUDGE WRIGHT BY RELATION TO A CASE PETITIONER DISCLAIMED, CONTRARY TO GENERAL ORDER 08-05, § 5.2

Petitioner's Notice of Related Cases (Dkt. 4) was filed under Local Rule 83-1.3, which governs the designation of related cases, and General Order 08-05, § 5.2, which governs their processing. The designation rested on a specific and documented overlap: the same USAO-CDCA supervisory officials whose institutional conduct gives rise to this Petition — Nicola T. Hanna and Tracy L. Wilkison — also appeared in Case No. 2:20-CR-00346(B)-DMG — the McCormick prosecution during overlapping periods. That same-official overlap is what satisfies Local Rule 83-1.3.1's criteria, because the two matters share substantially related questions concerning those officials' conduct and would entail a substantial duplication of labor if evaluated by different judges. On that basis, the Notice designated Case No. 2:20-CR-00346(B)-DMG, before Chief Judge Gee, as the related case.

General Order 08-05, § 5.2 then prescribes a mandatory, non-discretionary sequence upon the filing of such a Notice. It provides that "the Clerk shall prepare a proposed transfer order to be reviewed by the judge to whom the case first filed was assigned (the transferee judge – Judge Dolly M. Gee)," and shall provide an informational copy to the judge assigned the later-filed case (the transferor judge). The transferee judge then approves or declines the transfer.

Critically, the mechanism is keyed to the related case the party actually designated: it is the judge assigned to that designated first-filed case — here, the Honorable Chief Judge Gee — who would have reviewed and decided.

That mandatory sequence does not appear to have occurred here. Petitioner's Notice of Related Cases (Dkt. 4) designated Case No. 2:20-CR-00346(B)-DMG the McCormick action, before Chief Judge Dolly M. Gee, as the related case — and expressly disclaimed the 2017 civil rights action against DHS officials filed under an entirely different statutory framework (42 U.S.C § 1983 and the FTCA).

Under § 5.2, the Clerk was therefore **obligated** to prepare a proposed transfer order for review by Chief Judge Gee, the judge of the designated first-filed case, who alone could then consent to or decline the transfer. Chief Judge Gee appears to have never been presented with that determination. No proposed transfer order to Chief Judge Gee appears to have been prepared or reviewed, and

she neither approved nor declined the transfer of the case Petitioner designated as related to hers. The mandatory first step of the § 5.2 mechanism, as to the designated related case, does **not** appear to have been performed.

Instead, the transfer that issued related this action to the 2017 action — the case Petitioner disclaimed — and the case was placed on the calendar of Judge Wright, who signed the consent block. The result is that a determination the General Order vested in Chief Judge Gee, on the designation Petitioner filed, does not appear to have ever been made; and the action came to rest before the very judge whose 2018 and 2021 orders the Petition identified. Once the action was on his calendar, the record does not reflect that the § 5.2 determination on Petitioner's designated related case was thereafter referred to Chief Judge Gee for the review the General Order requires.

IX. RELIEF REQUESTED

Petitioner respectfully requests that the Court:

(1) order the recusal of Judge Wright from this action under 28 U.S.C. §§ 144, 455(a), and 455(b)(1), and return the action to the Clerk for reassignment;

(2) in the alternative, and to the extent the Court does not grant recusal upon Petitioner's accompanying affidavit under 28 U.S.C. § 144, refer this Motion to

another judge for determination of the affidavit's sufficiency and merits, as *United States v. Sibla*, 624 F.2d 864, 868 (9th Cir. 1980), directs;

(3) grant such other relief as is just and proper. In light of the statutory direction that a court "take up and decide any motion asserting a victim's right forthwith," 18 U.S.C. § 3771(d)(3), Petitioner respectfully requests prompt consideration.

Respectfully submitted,

DATED: July 31, 2026

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CERTIFICATE OF COMPLIANCE (L.R. 11-6.2)

The undersigned, Petitioner appearing in pro se, certifies that this brief contains 5,045 words, which complies with the word limit of L.R. 11-6.1.

DATED: July 31, 2026



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