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LOS ANGELES
BY

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

In Re:

GUSTAVO ESCAMILLA, an individual

Petitioner,

UNITED STATES OF AMERICA, THROUGH THE UNITED STATES ATTORNEY'S OFFICE FOR THE CENTRAL DISTRICT OF CALIFORNIA,

Real Party in Interest,

Case No. 2:26-cv-05207-ODW-EX

PETITIONER'S NOTICE AND APPLICATION TO DISQUALIFY UNDER 28 U.S.C. §§ 144, 455(a), 455(b)(1), AND 455(b)(5)(i) AND TO CORRECT RELATED-CASE PROCESSING UNDER GENERAL ORDER 08-05, § 5.2; MEMORANDUM OF POINTS AND AUTHORITIES

DISQUALIFICATION IS MANDATORY AND NON-WAIVABLE — RESPONDENT IS A NAMED PARTY. 28 U.S.C. § 455(b)(5)(i), (e); *In re Murchison*, 349 U.S. 133 (1955).

[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 submits this Notice and Application, under 28 U.S.C. §§ 144, 455(a), and 455(b)(1), for the disqualification of the Honorable Otis D. Wright II from this action, and further requests that the related-case processing prescribed by General Order 08-05, § 5.2, be corrected to conform to the Notice of Related Cases Petitioner actually filed. This Notice and Application 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. DISQUALIFICATION IS MANDATORY: A JUDGE CANNOT PRESIDE OVER A CASE IN WHICH HE IS A PARTY

A judge cannot preside over a case in which he is a party. That principle is as old as the common law and as firm as the Due Process Clause: "no man can be a judge in his own case." In re Murchison, 349 U.S. 133, 136 (1955). Respondent Otis D. Wright, II, is now a named party. Petitioner has filed an Emergency Petition under the Crime Victims' Rights Act naming Respondent Wright, in his official capacity, as a Respondent. **(Ex. A.)** That action is premised on the very orders this Notice and Application asks a different judge to examine. The moment Respondent Wright became a party, his disqualification became mandatory under 28 U.S.C. § 455(b)(5)(i), and non-waivable under § 455(e) — incapable of being waived by the parties, and incapable of being waived by the judge himself. No prior ruling changes that. No act of any party changes that. A party does not sit in judgment of his own case.

Two things follow, and neither is within Respondent Wright's discretion.

First, because he is a party, he may not preside; § 455(b)(5)(i) commands it and § 455(e) forbids any waiver.

Second, the mechanism by which this action came to rest on his calendar — the mandatory relatedness referral under General Order 08-05, § 5.2 — is a

clerical, non-discretionary function committed to the Clerk, not a judicial act subject to his ruling. A presiding judge does not adjudicate whether the Clerk performed the Clerk's mandatory duty; he has no authority to cure it, to waive it, or to strike it away. On both grounds, the proper course is not for Respondent Wright to decide anything, but to take the single step the law leaves open to him: to step aside, and to allow the matter to be routed as the General Order requires — to the Clerk for the § 5.2 referral, and to Chief Judge Gee for the determination the General Order commits to her.

I-A. This Court's Own Principle — "The Needs of the Many Outweigh the Needs of the Few" — Compels Disqualification

This Court has stated the governing principle in its own voice. In *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-08333-ODW(JCx) (C.D. Cal. May 6, 2013) (reported at 2013 WL 1898633) — a sanctions order issued for fraud upon the court — Respondent Wright opened with the words: "The needs of the many outweigh the needs of the few." The needs of the many — the integrity of the tribunal, and the public's confidence that no judge sits in his own case — outweigh any interest in a single judge retaining a matter the law does not permit him to keep. Respondent Wright asked that principle of the parties before him; Petitioner asks no more than that it apply with equal measure here.

The incongruity is aggravated by this Court's own prior treatment of the proceedings at issue. The Court recited the Western District of Missouri investigation in its 2018 Order — including the Government's agreement to treat Petitioner's company as a victim — then, in 2021, faulted the victim for failing to identify any criminal proceeding and dismissed his account as "speculation pulled from the ether."

No provision of the Crime Victims' Rights Act, the Attorney General Guidelines, or the Justice Manual conditions a victim's rights on his proving, to a California judge with no connection to the prosecution, that the crime occurred. A victim's rights attach upon the government's notification of the investigation — the duty § 3771(c)(1) imposes on officers "engaged in the detection, investigation, or prosecution of crime" to see that victims are "notified of, and accorded," their rights — not by leave of a court with no role in it.

II. INTRODUCTION

This Notice and Application presents two related requests, each grounded in the documentary record.

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," which was a civil rights lawsuit against DHS officials filed under a

different statutory framework, pursuant to 42 U.S.C. § 1983), the very case Judge Wright dismissed with prejudice and without leave to amend for "lack of subject matter jurisdiction" in 2018. And whose 2021 order, (notwithstanding, the victim's filed under an entirely different self-executing victim's rights enforcement action under 18 U.S.C. § 3771, wherein the government filed **NO** responsive pleadings and made **NO** appearance) the Petition documents 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 disqualification 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 inconsistent and 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.

II-A. RESPONDENT WRIGHT IS NOW A NAMED PARTY, AND DISQUALIFICATION IS MANDATORY AND NON-WAIVABLE UNDER 28 U.S.C. §§ 455(b)(5)(i) AND 455(e)

A threshold ground, not present when Petitioner last sought disqualification, now controls. Concurrently with this Notice and Application, Petitioner has filed an Emergency Petition for the enforcement of the Crime Victims' Rights Act, Case No. CV 26-9383-HDV (C.D. Cal., filed August 21, 2026), that names "Otis D. Wright, II, in his official capacity as a United States District Judge," as a Respondent. **(Ex. A.)** Respondent Wright is therefore a party to that related enforcement proceeding — an action premised on the very orders at issue here.

Section 455(b)(5)(i) provides that a judge "shall also disqualify himself" where he "[i]s a party to the proceeding." The command is mandatory, and its trigger is a single objective fact: party status. And unlike the appearance ground of § 455(a), the party-status ground cannot be waived. Section 455(e) is explicit:

> "No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b)."

Only grounds arising under subsection (a) may be waived, and only after full disclosure on the record. The party-status ground is not waivable at all — not by the parties, and not by the judge.

This is the oldest principle in the law of judicial disqualification, and it is rooted in the Due Process Clause. "No man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome." *In re*

Murchison, 349 U.S. 133, 136 (1955). The Supreme Court reaffirmed the principle in *Williams v. Pennsylvania*, 579 U.S. 1 (2016), holding that the Due Process Clause is violated where a judge has had significant, personal involvement in a critical decision in the matter before him, and that an unconstitutional failure to recuse constitutes structural error not subject to harmless-error review. Where the judge is himself a named party, the principle applies with its greatest force.

This ground cannot be waived — not by Respondent Wright, and not by any party. Because Respondent Wright is a party to the related enforcement action, § 455(b)(5)(i) commands his disqualification, and § 455(e) forbids any waiver of that command. This Notice and Application is therefore not a matter of discretion or reconsideration: no prior ruling, and no act of any party or of the judge himself, can waive a disqualification that the statute makes mandatory the moment the judge becomes a party. The ground did not exist when Petitioner previously sought disqualification, because Respondent Wright was not then a named party to any proceeding; it arises now, for the first time, from the filing of the Emergency Petition that names him as a Respondent.

III. 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 the Notice: under Local Rule 83-1.3.1, the same USAO-CDCA officials whose documented conduct gives rise to this Petition — including Nicola T. Hanna and Tracy L. Wilkison — also appeared in the McCormick prosecution, such that the two matters would entail substantial duplication of labor if heard by different judges. Petitioner did not designate the 2017 civil-rights action 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 § 1983 Civil Rights Action Arising Under An Entirely Different Statutory Framework.

On May 22, 2026, an Order Re Transfer (Form CV-34) related this action to No. 2:17-cv-07748 — not to the McCormick action Petitioner designated — and Judge Wright signed the "Consent" block accepting transfer to his calendar. The Clerk does not appear to have prepared the proposed transfer order to Chief Judge Gee that § 5.2 requires, and Chief Judge Gee — the judge of the designated first-filed case — 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 the McCormick criminal proceeding before Chief Judge Gee — in which McCormick was indicted in September 2020 and which remains pending before her — because the Government did **NOT** appear and filed **NO** responsive pleadings in Petitioner's 2021 Crime Victims' Rights Act proceeding, which Judge Wright dismissed *Sua sponte*, and because McCormick is the live criminal proceeding in which the same USAO-CDCA supervisory officials appear.

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 jurisdiction.

The connection among these matters is the documented government misconduct that runs through them. USAO-CDCA officials — including former U.S. Attorney Nicola T. Hanna and, in the July and October 2021 filings, then-Acting U.S. Attorney Tracy L. Wilkison — republished a fabricated, non-existent August 17, 2015, Colorado court ruling against Petitioners' company Greenway, contrary to the rulings actually entered in Greenway's favor. Those same supervisory officials are the basis on which Petitioner's Notice of Related Cases designated McCormick 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 DHS Officials To The Victim, 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 That Would Grant Victim's Rights

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."

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

That 2018 ruling rested on submissions by USAO-CDCA officials, led by former Acting U.S. Attorney Nicola Hanna, who in early 2018 republished and mischaracterized DHS Agent Gibson's fabricated August 17, 2015 court ruling — one that never occurred — and supplied the court with false and materially misleading pleadings and declarations.

IV. 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 same judge's two orders cannot be reconciled:

> **April 4, 2018 Order (Dkt. 13, at 2, Page ID #:210) — recited:**
>
> "**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 USAO-MO "**agreed that Greenway would be added as a victim in the government's case**."
>
> **April 2, 2021, Order — held:**
>
> that Plaintiffs "**failed** to specifically identify a **criminal proceeding supporting their claim that they have been victimized by the United States or the Department of Homeland Security and its agents**" — in the same order that quoted Petitioner's identification of a "**criminal case under seal against SELAKOVIC, BLACKBURN and others**" in "**criminal proceedings being conducted in the Western District of Missouri**" — and, addressing only the further assertion of a "**secret plea agreement and/or deferred prosecution agreement[],**" found that assertion "**merely speculation pulled from the ether**," concluding that Plaintiffs had supplied "**no basis to establish any rights under the Crime Victims' Rights Act.**"

The Court recited the very proceeding it said had not been identified.

Petitioner does not, by this Notice and Application, 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 disqualification 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.

V. THE SAME DOCUMENTED INFORMATION WAS PLACED BEFORE THE JUDGE FIVE (5) TIMES OVER SEVEN (7) MONTHS AND DISPOSED OF WITHOUT BEING ADDRESSED

The same documented information — that from July through October 2021 USAO-CDCA attorneys, led by former Acting U.S. Attorney Tracy L. Wilkison, misrepresented the record and again republished DHS' fabricated court ruling — was placed before Judge Wright repeatedly across roughly seven months, and disposed of each time sua sponte, unaddressed.

Petitioner recounts these instances not to adjudicate misconduct here, 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 the facts those same dispositions left unaddressed.

First (March 29, 2021, Dkt. 9). In briefing on the question then before the court, counsel filed a response to the order to show cause placing the documented 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."

Second (April 2, 2021). The government did **NOT** appear and did **NOT** file any responsive pleadings to contest those allegations; the court dismissed the petition *sua sponte* on a preclusion ground drawn from its earlier April 4, 2018, order, (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 misconduct before the court, quoted the operative text of the governing judicial-conduct canon, and expressly noticed the forthcoming Rule 60(d)(3) motion.

Fourth (September 18–20, 2021, Dkts. 18, 20). Counsel filed a Rule 60(d)(3) fraud-on-the-court motion documenting the same information; the court struck it "for failure to comply with Local Rule 7-3" (meet-and-confer). Counsel then initiated the meet-and-confer with the United States Attorney's Office and, per his sworn declaration, followed up after two weeks of no response before refiling — the sole stated impediment thus addressed by the movant and defaulted by the government.

Fifth (October 18–November 1, 2021, Dkts. 21, 23, 24). Having cured the objection, counsel refiled the Rule 60(d)(3) fraud-on-the-court motion (Dkt. 21), whose premise was direct: the government had defeated Petitioner's victim's-rights matter using fabricated underlying claims — the nonexistent court ruling and false declarations — so that every disposition from 2017 forward rested on that foundation. The government's opposition (Dkt. 23) denied none of the documented allegations on the merits, arguing only that, "assuming arguendo" a fraud on the court existed, "it would not 'affect the outcome of the case'" — but the fabrications were the stated ground of the dismissal that defeated the victim's-rights matter. The same information was before Judge Wright in the July, September, and October 2021 proceedings, and was disposed of *Sua sponte*, unaddressed, each time.

For the disqualification inquiry, the significance is objective: the same documented information was placed before this judge five (5) times over seven (7) months in 2021 and twice dismissed on the court's own initiative, while the sole procedural objection was cured by the movant and defaulted by the government. That this judge is now assigned once more to preside over the Petition challenging those very dispositions would cause a reasonable observer to question his impartiality.

VI. 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.

That sworn declaration set out, on personal knowledge, the same documented matters recounted above — including that a USAO declaration represented no record of Petitioner's May 1, 2017 civil-rights complaint could be found, and that DHS had advised Petitioner the Operation Software Slashers prosecution of Selakovic and Blackburn was filed under seal in the Western District of Missouri. Facts alleged in a § 144 affidavit are taken as true. *Berger v. United States*, 255 U.S. 22, 33–34 (1921).

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."

The 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 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 the Government'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 (2) successive filings, the Government declined to deny the documented conduct on the merits. For the limited purpose of this Notice and Application, the significance is narrow and objective: the facts bearing on the

disqualification 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 Notice and Application is properly before the Court.

VI-A. THE 2022 NINTH CIRCUIT AFFIRMANCE DOES NOT FORECLOSE THIS MOTION

The Government may invoke the Ninth Circuit's March 24, 2022 memorandum disposition in No. 21-55417, which affirmed the 2021 dismissal and rejected as without merit the contentions that the district court erred by failing to act on allegations of attorney wrongdoing in a different action, and that Judge Wright was biased. That disposition does not reach the grounds presented here, for four independent reasons.

First, the appeal reviewed what Judge Wright's framing sent up: a dismissal on borrowed jurisdictional and preclusion grounds from the 2017 § 1983 action. Because the 2021 order resolved the CVRA petition on that jurisdictional footing, the merits of victim status, rights, and restitution were never before the panel. An affirmance of a jurisdictional dismissal is not a merits adjudication of rights the dismissal never reached.

Second, the post-judgment restitution pathway under 18 U.S.C. § 3664(d)(5), as construed by In re Davis, 146 F.4th 710 (9th Cir. 2025), was not available in 2022 and could not have been decided then.

Third, the restitution deprivation is ongoing and undisclosed; the Government has never disclosed whether any restitution determination was made, and a right that has never been disclosed cannot have been resolved by the 2022 affirmance.

Fourth, and dispositively as to this Notice and Application, the party-status ground under § 455(b)(5)(i) was not before the Ninth Circuit and could not have been. In 2021 and 2022, Judge Wright was not a named party. He is now. The mandatory, non-waivable disqualification that arises when the judge becomes a party is a ground the 2022 panel never addressed and never could have.

VII. DISQUALIFICATION 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).

Disqualification 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 led by Tracy L. Wilkison — including Grace Y. Park, who had supplied the Court a sworn declaration defending DHS officials in Petitioner's 2017 civil-rights lawsuit — invoked *Liteky* to argue that ordinary "expressions of impatience, dissatisfaction, annoyance, and even anger" do not require disqualification. 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 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. That is the appearance *Liteky* leaves open, **not** the ordinary judicial friction it places off-limits.

Here, the objective circumstances — without any need to attribute motive — would cause a reasonable observer to question the assigned judge's impartiality: the Petition is premised on facts addressed in the same judge's 2018 and 2021 orders, which contradict each other on the dispositive victim-status question; the same documented information was placed before him repeatedly and the governing standard quoted by name, yet went unaddressed; and the Petition was routed to him by a transfer relating it to his own prior case — one Petitioner disclaimed — bypassing the mandatory § 5.2 determination vested in Chief Judge Gee.

The Code of Conduct for United States Judges recognizes that public confidence is promoted when a judge takes appropriate action upon reliable information that a lawyer likely violated professional-conduct rules. Canon 3B(6). Where such information was placed before the Court on five (5) separate occasions over seven (7) months 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 request now pending before the **Honorable Chief Judge Gee** 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-A. THE AUGUST 18, 2026 ORDER ILLUSTRATES THE CONCERN WITH UNUSUAL CLARITY

On August 18, 2026, the Court struck four of Petitioner's filings — including the Notice of Clerical Error that identified the § 5.2 misrouting by which this action reached this Court's calendar — on the ground that Petitioner:

> "fail[ed] to cite any legal authority supporting his position that Local Rule 7-3 does not apply to motions in actions filed under the Crime Victims' Right Act." (Dkt. 43.)

That order was entered citing "Notice 6, Dkt. No. 37." The authority the order declares absent appears in that same Notice, at pages 14 and 15, where

Petitioner cited the governing law by name: that "[t]he district court shall take up and decide any motion asserting a victim's right forthwith," 18 U.S.C. § 3771(d)(3), and that local rules "must be consistent with — but not duplicative of — Acts of Congress," Fed. R. Civ. P. 83(a)(1). The authority the Court described as missing was in the very document the Court was quoting.

The order is inconsistent on its own terms in a second respect. It acknowledges that "Local Rule 7-3 carves out some motions from this requirement" — yet declines to place within that carve-out the one category of motion Congress has commanded be decided forthwith. A rule the Court concedes is not absolute was applied as though it were, to strike the victim's filings and defer the adjudication the statute makes mandatory.

And the requirement the Court enforced cannot be met. Petitioner was faulted for failing to confer with the United States Attorney's Office — an office that disclaimed service on June 2, 2026, was served again under Rule 4(i) on June 24, 2026, and has never appeared. A victim cannot confer with a party that refuses to enter his case, nor be defaulted for the silence of the party the statute charges with protecting him.

The sequence a reasonable observer would see is therefore this: the Government declines to appear in the victim's case while arguing against his status

where he cannot enter; the victim cites controlling authority; and the Court strikes his filings for citing no authority — including the one asking how the case reached this judge at all. Whatever any single ruling might be defended as in isolation, the cumulative appearance is precisely what § 455(a) exists to address.

VII-B. A COURT WITHOUT JURISDICTION REACHED FINDINGS IT HAD NO POWER TO MAKE — AND USED THEM AGAINST THE VICTIM

This is not a claim of legal error. A wrong ruling is one thing. This is different: a court that declared it had no power to decide, then decided anyway — against the victim.

The rule is absolute. When a federal court finds it "lacks subject-matter" jurisdiction, it may do exactly one thing: note the defect and dismiss. "Without proper jurisdiction, a court cannot proceed at all, but can only note the jurisdictional defect and dismiss the suit." *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 94 (1998); accord *Bell v. Hood*, 327 U.S. 678, 682 (1946). Anything beyond dismissal "carries the courts beyond the bounds of authorized judicial action" and "offends fundamental separation-of-powers principles." *Steel Co.*, 523 U.S. at 94.

The April 2, 2021 Order dismissed for want of subject-matter jurisdiction. That was the entirety of the Court's power. It did NOT stop there. From an order

that could lawfully do nothing but dismiss, the Court made findings against the victim — that Petitioner had **failed** to specifically identify a **criminal proceeding supporting their claim that they have been victimized by the United States or the Department of Homeland Security and its agents**," and that his sworn account of the sealed Western District of Missouri prosecution was "**speculation pulled from the ether**." A court with no jurisdiction has no power to weigh a victim's credibility. This one did anyway.

And it did so against its own record. In its April 4, 2018 Order, this same Court had recited that very investigation in its own words — the extensive criminal investigation, the government's recovery of **over $26 million**, and the United States Attorney's Office's agreement that Greenway "**would be added as a victim in the government's case**." **(Ex. A.)** The investigation the Court in 2021 called conjured "from the ether" was the investigation the Court in 2018 had written into the record itself. **The victim did not fail to identify a criminal proceeding. The Court had already identified it.**

The direction of the reach is the heart of the matter. Before the Court lay documented allegations that United States Attorney's Office officials had placed a fabricated, non-existent court ruling and false declarations before the tribunal — allegations the Government has never denied on the merits. The Court did not reach past its jurisdiction to address those. It reached past its jurisdiction to

discredit the victim — to put on the public record that the victim's claims were baseless, while the Government's fabrications went unmentioned.

Petitioner ascribes no intent, and asks the Court to find none. He does not need to. The appearance is objective and complete on the face of the two orders: a court that lacked the power to decide, that used that powerless order to brand a crime victim's sworn account as fiction, that contradicted its own prior findings to do it, and that spent its overreach on the victim rather than on the documented fabrications before it. A neutral judge who lacks jurisdiction dismisses and says no more. The added step — reaching beyond the limit to declare the victim's claims meritless — is what a reasonable observer cannot square with impartiality. That is the standard § 455(a) sets, and this record meets it.

VII-C. THE GOVERNMENT ARGUED AGAINST THE VICTIM WHERE HE CANNOT ANSWER — AND REFUSED TO FACE HIM WHERE HE CAN

The Government's conduct across the two dockets sharpens the appearance of partiality. The Government has *never* entered this action — served under Rule 4(i), it has not appeared and has not opposed the Petition on the merits. Yet in a collateral criminal proceeding, where Petitioner has no standing and no means to respond, the Government filed an August 5, 2026 submission addressing his victim's-rights matter directly — advancing statements the record contradicts, each of which Petitioner specifically rebutted, point by point, in his August 10, 2026

Response (Dkt. 27, at 14–21), identifying the false and misleading assertions AUSA Castañeda placed before the criminal court — concerning the same fabrication first produced under former U.S. Attorney Nicola T. Hanna before the indictment, and the same fabrication the Government declined to deny on the merits when squarely challenged in its October 25, 2021, opposition. The continuity is a matter of record: Tracy L. Wilkison, who appeared for the Government in the 2021 proceedings, was at the same time appearing in the collateral criminal matter alongside AUSA Castañeda, where that fabrication was carried forward. A reasonable observer would see the Government litigate against the harmed victim where he cannot answer while refusing to face him where he can — and a Court that asked nothing of the party it should hold to account, yet struck the filings of the party it should protect: a victim who had placed documented misconduct before it, and whose victim status and restitution the Court's own 2018 order had recorded before its 2021 order declared his account baseless. That is the appearance § 455(a) exists to address.

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

Beyond the appearance standard of § 455(a), disqualification 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 the criminal investigation and victim-designation in 2018 later found, in 2021, that Petitioner had fabricated the very facts he had recited —

the contradiction set out in Section VII-B — reflecting a predisposition of the character §§ 144 and 455(b)(1) address.

A false determination on the public records that a litigant fabricated 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 Notice and Application to another judge for determination. *Sibla*, 624 F.2d at 868.

IX. THE RELATED-CASE PROCESSING SHOULD BE CORRECTED UNDER 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 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 McCormick, before Chief Judge Gee, as the related case.

General Order 08-05, § 5.2 then prescribes a mandatory, non-discretionary sequence: upon such a filing, the Clerk "shall prepare a proposed transfer order" for review by the judge of the first-filed designated case — here, Chief Judge Gee — who alone approves or declines the transfer, with an informational copy to the later-filed judge. That step, keyed to the case the party actually designated, was never performed: no proposed transfer order to Chief Judge Gee was prepared or reviewed, and she neither approved nor declined the transfer of the case Petitioner designated as related to hers.

That **mandatory** sequence does not appear to have occurred here. Petitioner's Notice of Related Cases (Dkt. 4) designated the McCormick action, before Chief Judge Dolly M. Gee, as the related case — and expressly disclaimed the 2017 action before Judge Wright.

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, was

never made; and the action came to rest before the very judge whose 2018 and 2021 orders the Petition challenges. 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.

On July 26, 2026, in the McCormick matter, special appearance counsel asked Chief Judge Gee (Dkt. 861) to take judicial notice of Petitioner's Notice of Related Cases and to consider coordination under § 5.2. On July 28, 2026, Chief Judge Gee set a briefing schedule (Dkt. 862). The § 5.2 relatedness question keyed to Petitioner's designation is therefore now pending before the first-filed judge the General Order designates.

That development reinforces the relief sought: the related-case determination belongs before Chief Judge Gee, not on Judge Wright's calendar by relation to a case Petitioner disclaimed.

The clerical character of this step is dispositive of a point the strike order does not reach. The § 5.2 referral is a non-discretionary function committed to the Clerk — not a motion within the presiding judge's discretion — and a defect in it cannot be cured by striking the paper that identifies it. Striking the Notice of Clerical Error does not correct the underlying misassignment; it leaves it in place.

In every prior proceeding, Respondent Wright sat as the assigned judge. Here he is a named Respondent — the party against whom relief is sought — and a party does not preside over the case against himself. The correspondence placing these facts before the Clerk in advance of filing is available for the Court's in camera review upon request.

Disqualification here is not a discretionary call on a close record — it is required on multiple independent grounds. Respondent Wright is a named party to this action, and § 455(b)(5)(i) makes his disqualification mandatory and non-waivable. Independent of party status, the § 455(a) record is complete on the face of the Court's own orders: a court that recited the criminal investigation and the victim's status in 2018, then denied their existence in 2021 from an order it had no jurisdiction to make. And beneath it all runs the asymmetry that defines this case: a Government that will not enter the victim's action — served, yet never appearing or answering on the merits — yet crosses into a collateral criminal proceeding, where the victim has no standing and no voice, to litigate against his rights and repeat the very fabrication it declined to deny when challenged. The victim is left to face a Government that argues against him only where he cannot answer, before a Court that has required nothing of that Government while striking his own filings. § 455(a) exists for precisely this. Disqualification ends it.

X. RELIEF REQUESTED

Petitioner respectfully requests that the Court:

(1) order the disqualification of Judge Wright from this action under 28 U.S.C. §§ 144, 455(a), 455(b)(1), and 455(b)(5)(i), and return the action to the Clerk for reassignment;

(2) in the alternative, and to the extent the Court does not grant disqualification upon Petitioner's accompanying affidavit under 28 U.S.C. § 144, refer this Notice and Application 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) direct that the related-case processing under General Order 08-05, § 5.2 be corrected to address the related case designated in Petitioner's Notice of Related Cases; and

(4) 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: August 24, 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 _____ words, which complies with the word limit of L.R. 11-6.1.

DATED: August 24, 2026,



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CERTIFICATE OF COMPLIANCE WITH THE COURT'S

GENERATIVE ARTIFICIAL INTELLIGENCE ORDER

The undersigned certifies the following regarding the use of generative artificial intelligence in the preparation of this filing:

__X__ This filing USES generative artificial intelligence.

_____ This filing DOES NOT use generative artificial intelligence.

Petitioner used a generative artificial intelligence tool to assist in drafting portions of this filing. Petitioner has reviewed and revised the content, has verified the legal citations and the factual assertions to the best of his ability, and adopts the filing as his own. The positions and representations set forth herein are made in good faith and in compliance with Federal Rule of Civil Procedure 11.

DATED: August 24, 2026,



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