FILED
2026 SEP -1 PM 12:09
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY

Gustavo Escamilla
1315 Highland Avenue
Glendale, California 91202
(818) 355-0062
gescamilla@ymail.com
Petitioner in Pro Se

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

In Re:

GUSTAVO ESCAMILLA, an individual

Petitioner,

v.

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-AB-E

PETITIONER'S EMERGENCY NOTICE AND APPLICATION OF NON-OPPOSITION TO DEEM THE PETITION UNOPPOSED AND TO TAKE UP AND DECIDE THE CVRA/MVRA PETITION FORTHWITH; MEMORANDUM OF POINTS AND AUTHORITIES

[CRIME VICTIMS' RIGHTS ACT, 18 U.S.C. § 3771(d)(3) — TO BE DECIDED FORTHWITH; NO HEARING REQUIRED]

TABLE OF CONTENTS

I. THE GOVERNMENT WAS SERVED, ITS SOLE OBJECTION WAS CURED, AND IT STILL DID NOT RESPOND — ITS SILENCE IS CONSENT UNDER LOCAL RULE 7-12 5

II. INTRODUCTION 8

III. THE RELIEF SOUGHT IS NARROW, STATUTORY, AND CONTROLLED BY IN RE DAVIS 11

IV. THE GOVERNMENT IS FORECLOSED FROM DISPUTING THAT THE CRIMINAL PROCEEDING EXISTED — SEVERAL TIMES OVER, IN DESCENDING ORDER OF FORCE — AND ITS OWN FORFEITURE COMPLAINT, SWORN BY DHS AGENT SHAWN S. GIBSON AND SIGNED BY AUSA JAMES CURT BOHLING, NOW ESTABLISHES THOSE FACTS 14

V. THE APRIL 2, 2021 ORDER EXCEEDED THE COURT'S AUTHORITY AND CONSTITUTED AN ACT NOT JUDICIAL IN NATURE — AND IS THEREFORE ENTITLED TO NO PRECLUSIVE EFFECT 18

VI. THE GOVERNMENT, ACTING THROUGH OFFICIALS WHO HAD NO ROLE IN THE PROSECUTION AND NO AUTHORITY TO DECIDE THE VICTIM'S STATUS, ADVANCED THE FABRICATION ANYWAY — INVESTIGATIVE AND ADMINISTRATIVE CONDUCT THAT NO IMMUNITY SHIELDS 22

VII. THE AUGUST 5, 2026, FILING REFLECTS DELIBERATE INDIFFERENCE AND CONSCIOUS DISREGARD OF PETITIONER'S VICTIMS' RIGHTS — THE SAME FABRICATION, REPEATED WHERE THE VICTIM COULD NOT ANSWER 25

VIII. SERVICE IS PERFECTED, THE FIVE-DAY LIMIT HAS LONG SINCE PASSED, AND THE SILENCE WAS A CHOICE 31

IX. RELIEF REQUESTED 33

CERTIFICATE OF COMPLIANCE (L.R. 11-6.1) 38

CERTIFICATE OF COMPLIANCE WITH THE COURT'S GENERATIVE ARTIFICIAL INTELLIGENCE ORDER 39

TABLE OF AUTHORITIES

CASES

Bell v. Hood, 327 U.S. 678 (1946) 18
Buckley v. Fitzsimmons, 509 U.S. 259 (1993) 23
Costello v. United States, 365 U.S. 265 (1961) 27
Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778 (9th Cir. 2001) 16
Imbler v. Pachtman, 424 U.S. 409 (1976) 22
In re Davis, 146 F.4th 710 (9th Cir. 2025) (as amended Aug. 1, 2025) ..... passim
Lanuza v. Love, 899 F.3d 1019 (9th Cir. 2018) 23, 25, 30
New Hampshire v. Maine, 532 U.S. 742 (2001) 16
Steel Co. v. Citizens for Better Environment, 523 U.S. 83 (1998) 18
United States v. $442,992.97 in U.S. Currency, et al., No. 15-0079-CV-W-DGK (W.D. Mo.) ... 16

STATUTES

18 U.S.C. § 3663A ..... passim
18 U.S.C. § 3663A(a)(1) 11
18 U.S.C. § 3663A(a)(2) 11
18 U.S.C. § 3663A(c)(1)(A)(ii) 11
18 U.S.C. § 3664 ..... passim
18 U.S.C. § 3664(d)(5) ..... passim
18 U.S.C. § 3664(g)(1) 12
18 U.S.C. § 3771 ..... passim
18 U.S.C. § 3771(a)(2) 8
18 U.S.C. § 3771(a)(5) 8
18 U.S.C. § 3771(a)(6) 8
18 U.S.C. § 3771(a)(8) 8
18 U.S.C. § 3771(a)(10) 12

18 U.S.C. § 3771(c)(1) ..... passim
18 U.S.C. § 3771(d)(3) ..... passim
18 U.S.C. § 3771(d)(6) 12
18 U.S.C. § 3771(e)(2)(A) 33
18 U.S.C. § 3771(f) 12
18 U.S.C. § 3771(f)(2)(C) 12

RULES AND OTHER AUTHORITIES

Fed. R. Civ. P. 4(i) 5
Fed. R. Civ. P. 4(i)(2) 8
Fed. R. Civ. P. 41(b) 27
Local Rule 7-12 5
General Order 08-05, § 5.2 33
Attorney General Guidelines for Victim and Witness Assistance 8
Justice Manual 12

PETITIONER'S EMERGENCY NOTICE AND APPLICATION OF NON-OPPOSITION TO DEEM THE PETITION UNOPPOSED AND TO TAKE UP AND DECIDE THE CVRA/MVRA PETITION FORTHWITH; MEMORANDUM OF POINTS AND AUTHORITIES

TO THE HONORABLE COURT AND ALL PARTIES:

I. THE GOVERNMENT WAS SERVED, ITS SOLE OBJECTION WAS CURED, AND IT STILL DID NOT RESPOND — ITS SILENCE IS CONSENT UNDER LOCAL RULE 7-12

This Application presents the Court with a single, dispositive contradiction. A federally identified crime victim served the United States in this case more than three months ago and has heard nothing — no appearance, no response, not one word. Yet on August 5, 2026, in a separate criminal proceeding where that same victim is not a party and has no voice, the Government filed against him: it placed his victim status and his pending Crime Victims' Rights Act petitions directly at issue and told another federal judge that his claims were meritless. (See § VII.) So, the Government has had a great deal to say about this victim — in the one courtroom he cannot enter. It has said nothing at all in his own case, where he can. That contradiction decides this Application, because it admits of only one explanation: the Government will not defend its position where the victim can answer it.

There is no dispute about service, because the Government is the only party that ever said anything about it. Everything the record contains on the subject, the Government put there — and everything it put there defeats it. Petitioner filed his

Emergency Petition on May 14, 2026 (Dkt. 1) and served the United States on May 18, 2026. On June 2, 2026, the United States Attorney's Office — through Acting Civil Chief Daniel A. Beck — declined to respond and gave a single reason: that service had not been properly effected under Federal Rule of Civil Procedure 4(i). That was the Government's one and only stated ground. It did not dispute a fact. It did not defend the merits. It raised service, and nothing else.

Then it was told service was *not* the issue. On June 19, 2026, an attorney acting on behalf of Petitioner in a limited-scope capacity advised Beck, in writing, that the Rule 4 framework has *no* application to a self-executing Crime Victims' Rights Act enforcement action, which proceeds by motion under 18 U.S.C. § 3771(d)(3) — *not* by the summons-and-answer sequence of an ordinary civil suit.

Petitioner reinforced the point in his own letter to Beck on August 16, 2026 (**Ex. B**), enclosing the Attorney General Guidelines themselves, and invited the Government to identify a single provision of the Crime Victims' Rights Act, those Guidelines, or the Justice Manual requiring the service it demanded.

It identified none, because there is none. And Petitioner cured the objection anyway: on June 24, 2026, he re-served the United States in strict compliance with Rule 4(i) — service on the Civil Process Clerk **and certified mail to the Attorney General**. Whatever force the lone objection ever had been extinguished that day.—

service on the Civil Process Clerk and certified mail to the Attorney General. Whatever force the lone objection ever had was extinguished that day.

So consider where that leaves the Government. It raised one objection. It was told the objection was baseless. It watched Petitioner cure it. And then — with no ground left to stand on — it said nothing. In the more than two (2) months since service was perfected, and the more than three (3) months since the Petition was filed, the Government has not appeared, has not responded, has not sought an extension, and has not controverted a single fact.

But its silence here is not the silence of a party with nothing to say. On August 5, 2026 — in the very window it refused to answer in this case — the same officials found their voice. In a collateral criminal proceeding where Petitioner is **not** a party and has **no** voice, they filed against him: they placed his victim status and his pending petitions directly at issue and told another judge his claims were meritless and had been repeatedly rejected. (See § VII.) They answered there. They will not answer here. They have the will to attack this victim; they lack only the willingness to do it where he can respond. That is not a defense. A defense engages, in the forum where the other side can be heard. This is the opposite: it is a party striking at a victim in the one place he cannot fight back, and hiding in the one place he can. It is a default — and a telling one.

This District has a rule for exactly this. Local Rule 7-12 provides that "[t]he failure to file any required document, or the failure to file it within the deadline, may be deemed consent to the granting or denial of the motion." The Government was required to respond and did not. Its silence is therefore consent — not by inference, but by rule. Having told Petitioner on June 2 that service was its concern, having been told on June 19, 2026, that the concern was groundless, and having watched it cured on June 24, 2026, the Government cannot now be heard to say it was ever excused. Its stated excuse is gone. No other was offered. Nothing stood between the Government and a response but its own decision not to make one.

The record it declined to contest is set out below — documented, sworn, and undenied. What follows is not a set of allegations awaiting the Government's answer. It is the answer the Government chose not to give here, even as it spoke freely elsewhere. On a record this complete, and an opposition this absent by choice, the relief the Petition seeks should be granted.

II. INTRODUCTION

A federally identified crime victim has waited more than three (3) months for a court to do what a federal statute commands be done "*forthwith*." Petitioner Gustavo Escamilla — identified by the Department of Homeland Security as the Lead Victim of Operation Software Slashers, one of the government's largest

counterfeiting investigations and prosecutions of its kind — respectfully requests this Court to end that wait at its earliest available convenience.

///

He applies under the Crime Victims' Rights Act, 18 U.S.C. § 3771, and for relief under the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3663A and 3664 — by petition to amend the restitution order under 18 U.S.C. § 3664(d)(5), pursuant to *In re Davis*, 146 F.4th 710 (9th Cir. 2025) (as amended Aug. 1, 2025), for an order taking up and deciding his Emergency Petition — a self-executing victim's-rights enforcement action — forthwith.

The statute could not be more direct. Section 3771(d)(3) commands that "the district court shall take up and decide any motion asserting a victim's right forthwith," and caps any continuance at five (5) days. Many multiples of that period have elapsed. But the elapsed time is only the surface of the injury. The Government's conduct has denied Petitioner the very rights the Act guarantees — reasonable, accurate, and timely notice, 18 U.S.C. § 3771(a)(2); the right to confer with the attorney for the Government, *id.* § 3771(a)(5); full and timely restitution, *id.* § 3771(a)(6); and treatment with fairness and respect for the victim's dignity, *id.* § 3771(a)(8). Each of these the Government was bound to make its "best efforts" to accord. *Id.* § 3771(c)(1). It made none. And the rights it denied him are the very

rights it attacked on August 5, 2026 (Dkt 864)— in the forum where he could not answer.

It cannot claim it did not know. The Government has been on notice since May 18, 2026; it objected to service on June 2, 2026; and it was re-served under Rule 4(i) on June 24, 2026. Across those months and services, it has neither appeared, responded, nor accorded Petitioner a single victim's right.

Aggravated by the fact that the office that has ignored him had no business deciding his status in the first place: the United States Attorney's Office for the Central District of California charged no one, interviewed no witness, and played no part in the Operation Software Slashers criminal investigation — a prosecution conducted by the United States Attorney's Office for the Western District of Missouri. It was a stranger to the case that made Petitioner a victim. Yet it is that office, and that office alone, that has spent years deciding he is not one.

And there is now proof of the established victim's restitution fund DHS Supervisory Special Agent Shawn S. Gibson told Petitioner and his business partner existed during their recorded face-to-face interview. Petitioner has identified the Government's own records of the seized assets — over $20 million — from the Operation Software Slashers investigation, in a forfeiture complaint sworn under

penalty of perjury by the DHS agent at the center of this matter, Supervisory Special Agent Shawn S. Gibson. (**Ex. C**.)

This is the same Agent Gibson who then fabricated a nonexistent court ruling to suspend the investigation, strip Petitioner's victim status, and withhold the restitution the law makes mandatory. This is not Petitioner's characterization; it is the Court's own — the April 4, 2018 Order recited, on the record, that the investigation existed, that the victim had been identified, and that a fund of over $20 million had been recovered. The money has been there all along, in the Government's own hands. That is why this Application is brought now.

III. THE RELIEF SOUGHT IS NARROW, STATUTORY, AND CONTROLLED BY *IN RE DAVIS*

The Government holds more than $20 million of this victim's money, and the law does not permit it to keep a dollar. Restitution under the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3663A and 3664 (MVRA), is mandatory, not discretionary. Restitution is mandatory under 18 U.S.C. § 3663A(a)(1) for the offenses described in § 3663A(c)(1)(A)(ii) — "an offense against property under this title … including any offense committed by **fraud or deceit**."

The Operation Software Slashers prosecution was exactly that: a counterfeit-goods and trademark-trafficking conspiracy carried out by **fraud and deceit**. The Department of Homeland Security identified Petitioner's company Greenway as its

Lead Victim. Greenway suffered harm as a direct result of federal criminal acts committed by **fraud and deceit**, and Petitioner is therefore a "victim" as § 3663A(a)(2) defines the term — "a person directly and proximately harmed" by the offense, including one harmed "in the course of the scheme, conspiracy, or pattern." For such offenses and such victims, the statute leaves no room for discretion.

The court "**shall** order" restitution. 18 U.S.C. § 3663A(a)(1). That single word — "***shall***" — answers everything the Government has done here. A mandatory obligation cannot be recast as a discretionary one; yet a victim the Government itself identified was summarily stripped of the restitution the law commands.

And by whom? Not by anyone with the power to do it. The former presiding Judge and the USAO-CDCA officials had no role in the Operation Software Slashers prosecution — no charging authority, no supervisory role, no involvement of any kind. It was never within their power to decide Petitioner's victim status or to withhold his restitution. They withheld what they had no authority to touch. The law does not permit that, and this Court should not ratify it.

The pathway to enforce this mandatory restitution post-judgment is controlled by *In re Davis*, 146 F.4th 710 (9th Cir. 2025) (as amended Aug. 1, 2025), which holds that a petition to amend a restitution order under 18 U.S.C. § 3664(d)(5) qualifies as a victim's-rights motion under § 3771(d)(3), enforceable in the district

court. That decision issued June 2, 2025 — a cause of action unavailable before that date. It post-dates every prior ruling in this matter and forecloses any reliance on the earlier dismissals: issue preclusion does not bar relitigation where "the issue is one of law and a new determination is warranted in order to take account of an intervening change in the applicable legal context," and *In re Davis* is precisely such a change.

The framework *In re Davis* established is satisfied here element for element, as set out in full in the Petition (No. CV 26-9383-HDV, Dkt. 1, § X, at 78–80), incorporated by reference: the sealed Western District of Missouri prosecution means "no prosecution is underway" and venue lies where the crimes caused harm; a post-judgment § 3664(d)(5) petition "fall[s] comfortably within 'any motion'" asserting a victim's right; and the losses were "further losses" the victim did not know had been omitted. *In re Davis*, 146 F.4th at 715, 720, 722–23, 732.

Element four is the *sword*. *In re Davis* holds that government institutional failure alone supplies good cause to amend restitution under § 3664(d)(5), *id.* at 732, and no victim diligence is required, because "[n]o victim shall be required to participate in any phase of a restitution order," 18 U.S.C. § 3664(g)(1). The burden fell on the Government, not the victim.

Petitioner's showing exceeds *Davis*: the Government identified Greenway as the Lead Victim, represented that an established fund existed, and then — through Agent Gibson's fabrication — unlawfully suspended the very criminal investigation that would have delivered the restitution, cutting off the victim's access to the seized fund of over $20 million, documented in the Bohling-signed, Gibson-sworn forfeiture complaint (Ex. C). It disclosed nothing. Where institutional failure alone suffices, affirmative misrepresentation that manufactured the victim's exclusion establishes good cause *a fortiori.*

And on August 5, 2026, that same office made multiple false, material, and misleading statements — going so far as to call the very status underlying this mandatory restitution "meritless" — in the one forum where the victim could not correct it.

The relief Petitioner seeks is deliberately narrow. He seeks declaratory relief and the enforcement of his prospective rights under the CVRA and the MVRA — no damages, no vacatur, no finding of fraud on the court. *See* 18 U.S.C. § 3771(d)(6).

Petitioner further notes that willful or wanton failures by Department of Justice employees to accord a crime victim his rights are subject to the CVRA's own disciplinary and referral mechanism — referral to the Department's Victims' Rights Ombudsman under 18 U.S.C. § 3771(a)(10) and (f), and the sanctions §

3771(f)(2)(C) requires for employees who "willfully or wantonly fail to comply" — and leaves to the Court's discretion whether any such notation is warranted on this record. The Attorney General Guidelines and the Justice Manual reflect these same obligations.

IV. THE GOVERNMENT IS FORECLOSED FROM DISPUTING THAT THE CRIMINAL PROCEEDING EXISTED — SEVERAL TIMES OVER, IN DESCENDING ORDER OF FORCE — AND ITS OWN FORFEITURE COMPLAINT, SWORN BY DHS AGENT SHAWN S. GIBSON AND SIGNED BY AUSA JAMES CURT BOHLING, NOW ESTABLISHES THOSE FACTS

The Government's central defense reduces to a single, untenable proposition: that the federal criminal proceeding it once described in its own words, and won a judgment upon, never existed. It cannot be heard to say so — and on August 5, 2026, in a forum where the victim could not object, it tried to say so anyway. The Government is foreclosed from that argument several times over: by the defense on which it won, by this Court's adoption of the facts, and by its own sworn filings. Each ground is independently dispositive, and each is developed at length in Petitioner's Petition and Updated Notice and Application in the related matter (No. CV 26-9383-HDV, Dkt. 1, Dkt. 15), incorporated here by reference.

First, and dispositively: the Government prevailed on a defense that presupposes the very fact it now disputes. To win dismissal of Petitioner's 2017 civil rights action, the Office invoked the discretionary-function exception —

representing that ICE and USAO-MO "in their discretion, made the reasoned decision that they would not resume their "investigation."" That was its ticket to a judgment, and it carried a cost the Government cannot escape: one does not exercise discretion whether to "resume" a then active DHS criminal "investigation" that never began. And the moment that "investigation" existed, so did Petitioner's rights under 18 U.S.C. § 3771(c)(1) — as the Government, on notice from DHS's own identification of Greenway as a victim, knew or had every means to know. Having won on that premise, the Government is judicially estopped from disowning it. *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001); *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782–83 (9th Cir. 2001).

Second and third: this Court adopted those same facts, and the Government stated them as its own — repeatedly. As established on the face of this Court's own record, and set out in full in Petitioner's related filings (No. CV 26-9383-HDV, Dkt. 1, Dkt. 15) — uncontested by the Government — the April 4, 2018, Order recited DHS's extensive criminal investigation, the recovery of over $20 million, the established victims' restitution fund, and the USAO-MO agreement to add Greenway as a victim, attributing each to "Mot. 3," the Office's own motion (No. 2:17-cv-07748, ECF No. 9, at 10). The Office repeated the same account in its July 19, 2021 and October 25, 2021 oppositions (No. 2:17-cv-07748, ECF Nos. 15, 23), challenging those facts only "*arguendo*," never on the merits. A litigant is bound by

the factual narrative it presents in its own brief, and this Government presented it again and again.

And now there is something more than estoppel. **There is proof**.

The civil forfeiture complaint in *United States v. $442,992.97 in U.S. Currency, et al.*, No. 15-0079-CV-W-DGK (W.D. Mo., filed Jan. 30, 2015) — signed by Assistant United States Attorney James Curt Bohling of USAO-MO and verified under penalty of perjury by DHS/ICE Supervisory Special Agent Shawn S. Gibson — documents the seizure of the very assets tied to the Operation Software Slashers prosecution, in excess of $20 million. (**Ex. C**.) It is the Government's own sworn instrument. It names the investigation. It catalogs the seized fund. And it was verified by the same agent — Gibson — who would later fabricate a non-existent federal court ruling, purportedly entered in favor of the primary bad actor and against Greenway's trademark-infringement claims, and deploy it to dissuade the victim from offering evidence or testimony during then-active criminal proceedings — making that fund, and Petitioner's status, disappear.

Set the two (2) documents side by side, and the Government's position collapses. In 2015, its own agent swore, under penalty of perjury and before a federal court, that the investigation was real and that more than $20 million had been seized.

In 2016, that same agent told Petitioner the opposite — that a court had ruled against him, in a fabricated ruling pulled from the "ether" that no court ever issued — and the restitution fund that both this Court and the U.S. Attorney's Office had acknowledged fell silent.

One statement is a federal record. The other is a fabrication. The Government has spent years litigating as though the fabrication were the truth — most recently on August 5, 2026, when it advanced that same fabrication's premise where the victim could not answer it.

That is the fact — now known, now documented — that the Government asks this Court to keep treating as imaginary: an established victims restitution fund its own agent swore (DHS Supervisory Agent Shawn S. Gibson) to under penalty of perjury. That proof now exists — of record, on the public docket, in the Government's own hand. The threshold fact is no longer imaginary or contestable, and it is not contestable for the simplest of reasons: not because Petitioner asserts it, but because the Government swore to it.

V. THE APRIL 2, 2021 ORDER EXCEEDED THE COURT'S AUTHORITY AND CONSTITUTED AN ACT NOT JUDICIAL IN NATURE — AND IS THEREFORE ENTITLED TO NO PRECLUSIVE EFFECT

What the Court did in the April 2, 2021, Order was not an exercise of judicial power. It was an act not judicial in nature — a court reaching a decision it had, in

the same breath, declared it had no authority to reach. Having found that it "lacked subject-matter jurisdiction," the Court was empowered to do exactly one (1) 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." *Steel Co.*, 523 U.S. at 94. It may close the door. It may not walk through it.

The Court walked through it. From an order that could lawfully do nothing but dismiss, it reached merits findings against the victim — that Petitioner had "failed to identify a criminal proceeding," and that his sworn account of the sealed Western District of Missouri prosecution was "speculation pulled from the ether." Those are not jurisdictional observations. They are determinations of fact and credibility, made by a court that had just declared it had no power to reach the merits at all. A court with no jurisdiction has no power to weigh a victim's credibility — yet the Court did exactly that, offering unwarranted, harmful, and discrediting findings and, in a striking inversion, accusing the victim himself of fabrication by dismissing his corroborated account as "speculation pulled from the ether."

It weighed the victim's credibility anyway — an act beyond "the bounds of authorized judicial action" in the precise sense the Supreme Court used in *Steel Co.*,

and not, in any recognized sense, a judicial act at all. These grounds are set out in full in Petitioner's Application and Notice to Disqualify (No. 2:26-cv-05207-AB-E, Dkt. 47, § VII-B), incorporated here by reference

> **The rule is absolute (Steel Co. v. Citizens for Better Environment, 523 U.S. 83, 94 (1998)):**
>
> A court that finds it lacks subject-matter jurisdiction may do one thing only — "**note the jurisdictional defect and dismiss the suit**." Anything more "**carries the courts beyond the bounds of authorized judicial action**" and "**offends fundamental separation-of-powers principles**."
>
> **What the April 2, 2021 Order did instead (Page ID #:293–294):**
>
> From an order that could lawfully do nothing but dismiss, the Court reached findings against the victim — weighing the credibility of a sworn account and branding it "**speculation pulled from the ether**." A court with no jurisdiction has no power to weigh a victim's credibility. It did so anyway.

The act was not only beyond the Court's power. It contradicted the same court's own prior record. On the single dispositive question in any Crime Victims' Rights Act matter — whether the federal criminal proceeding from which victim status arises exists — the Court's two orders cannot stand together. In 2018, it wrote the investigation into the record itself. In 2021, it called that same investigation imaginary. Set side by side, the two (2) orders refute each other:

> **April 4, 2018 Order (No. 2:17-cv-07748-ODW-MRW, 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 Petitioner "**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 (No. 2:21-cv-01910-ODW, Dkt. 10, Page ID #:293–294) — held:

that Petitioner "**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 very order quoting Petitioner's identification of "**criminal proceedings being conducted in the Western District of Missouri**" — and found that account "**merely speculation pulled from the ether**," concluding that Petitioner had "**supplied no basis to establish any rights under the Crime Victims' Rights Act**."

Petitioner's account was no conjecture — it was a representation of what DHS Agent Gibson told Petitioner and his business partner, in a recorded face-to-face meeting, that the Selakovic prosecution had been filed under seal in the Western District of Missouri. The Court branded that representation — the government's own agent's, relayed by the victim — as "speculation pulled from the ether," though it was not present at the meeting, had no firsthand knowledge whatsoever of any of it, and had no authority to weigh or reject a federally identified victim's sworn account.

And the Court knew, or had every means to know, that the investigation was real — it had written it into the record itself. Its own April 4, 2018, Order recited the DHS criminal investigation, the recovery of the established victims' restitution fund, and the agreement that Greenway would be added as a victim — and it did so on a record that included Agent Gibson's own communications conferring that status on

Petitioner and Greenway. A fact a court finds and records cannot become a fiction because the same court later finds it inconvenient.

This is the sum of it: a court that had declared it possessed no jurisdiction reached into the merits, weighed a sworn victim's credibility, accused him of fabrication through its own speculation, and contradicted its own record to do it — branding a federally identified victim's corroborated account "speculation pulled from the ether" and, by findings it had no authority to make, stripping him of his status, his rights, and every dollar of mandatory restitution.

That is not adjudication. It is not error. It is an act not judicial in nature — and because a jurisdictional dismissal that reaches beyond its own authority decides nothing, the April 2, 2021, Order is entitled to no preclusive effect. That is the very order the Government invoked on August 5, 2026, before another judge, as though it had decided something. It did not. See Petitioner's Application and Notice to Disqualify (No. 2:26-cv-05207-AB-E, Dkt. 47, § IV), incorporated here by reference.

VI. THE GOVERNMENT, ACTING THROUGH OFFICIALS WHO HAD NO ROLE IN THE PROSECUTION AND NO AUTHORITY TO DECIDE THE VICTIM'S STATUS, ADVANCED THE FABRICATION ANYWAY — INVESTIGATIVE AND ADMINISTRATIVE CONDUCT THAT NO IMMUNITY SHIELDS

These officials were strangers to the case that made Petitioner a victim. As established in the record of this Court and in Petitioner's related filings (No. CV 26-9383-HDV, Dkt. 1, Dkt. 15) — uncontested by the Government — the Operation Software Slashers defendants were prosecuted under seal by USAO-MO in the Western District of Missouri.

The USAO-CDCA officials whose conduct is at issue — AUSA Patrick Castañeda, First Assistant U.S. Attorney Bilal A. Essayli, AUSA Kathrynne Seiden, and AUSA Laura A. Alexander — had no part in it: no charging decision, no prosecutorial discretion, no supervisory role. Yet, having no authority to decide Petitioner's victim status, the Government, through these officials, decided it anyway — against him, by advancing DHS Supervisory Agent Gibson's fabrication.

The law does not permit that, and it does not shield it. Immunity turns on the function an official performs, not the office he holds. A prosecutor is absolutely immune only for conduct "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976). But "[a] prosecutor's administrative duties and those investigatory functions that do not relate to an advocate's preparation for the initiation of a prosecution or for judicial proceedings are not entitled to absolute immunity." *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993). When officials act as investigators or administrators, they "may enjoy only qualified immunity for that conduct." *Id.* at 273–74. Confirming

whether Petitioner is the crime victim that DHS had already identified — the victim the Government itself recited in its own 2018 motion to dismiss, and that this Court's April 4, 2018, Order in turn recorded — is an administrative and investigative act: reading a file, not exercising judgment before a tribunal.

And to the extent the deprivation rested on fabrication, no immunity attaches at all. The Ninth Circuit has held as much — on facts materially identical to these, and involving the same federal agency. In ***Lanuza v. Love***, 899 F.3d 1019 (9th Cir. 2018), a DHS/ICE official "intentionally submitted a forged document" that barred an individual from relief to which he was "otherwise lawfully entitled."

The court refused immunity, holding that it "was not meant to protect those who are 'plainly incompetent or those who knowingly violate the law.'" *Id.* at 1029, 1034. "**[T]his case**," the court wrote, "**is about a lie, and all the ways it was used, over several years, to defraud the courts**." *Id.* at 1021. ***So*** is this one.

Nor was the deprivation inadvertent. Castañeda, Essayli, Seiden, and Alexander knew, or had every means to know, exactly who Petitioner was; they had only to read their own file. The Office said as much in writing: when Petitioner sought assistance, its Victim-Witness Specialist, Allison Stafford, responded that "[i]t does not appear that you are an identified crime victim in a federal criminal proceeding," and that "[w]e cannot assist you" — a refusal of the very duty the

Office was mandatorily bound to perform, by an official acting in a purely administrative capacity.

And on July 19, 2021, in the Office's Opposition to Disqualify (No. 2:17-cv-07748, ECF No. 15), the Government did not correct the fabrication — it mischaracterized, adopted, and republished it, in its own words, pressing Gibson's phantom Colorado ruling as the stated basis to defeat the victim's rights. That is not a failure to act. It is the affirmative use of a known falsehood to deprive a federally identified victim of what the law guarantees him.

The Government's knowledge did not end there. On December 18, 2025, Petitioner served the Office — addressed to First Assistant U.S. Attorney Bilal A. Essayli, and copied to the Attorney General, the Office of Professional Responsibility, the Inspector General, and the Victims' Rights Ombudsman — with a formal Notification of Alleged Misconduct, supported by material evidence already of record, documenting multiple credible and, to this day, undenied allegations of professional misconduct by its own officials. He renewed that notice through January 2026. So, the Government had actual, written notice — not once, but repeatedly, and at the highest levels of the Department. It did not investigate. It did not correct. It did the opposite: it mischaracterized the record, adopted the fabrication, and republished it.

And in doing so, it denied this victim the very rights the statute guarantees. Through officials bound by 18 U.S.C. § 3771(c)(1) to make their "best efforts" to accord crime victims their rights, the Government denied Petitioner his right to notice, his right to confer, his right to full and timely restitution, and his right to be treated with fairness and dignity. 18 U.S.C. § 3771(a)(2), (a)(5), (a)(6), (a)(8). The last of these it violated the moment it let stand a judicial finding branding this victim's sworn, corroborated account "speculation pulled from the ether."

That is the distinction that decides this section. The Government did not act as a prosecutor — much less an advocate before a tribunal — in DHS's and USAO-MO's Operation Software Slashers investigation or prosecution. It had no role in that case at all. What it did instead was act in an investigative and administrative capacity, the precise function for which *Buckley* and *Imbler* withhold absolute immunity. And it did so by pressing forward with the very kind of government fabrication the Ninth Circuit condemned in ***Lanuza v. Love*** — a DHS lie "**used, over several years, to defraud the courts**," which "**would tempt others to do the same**" if left unremedied. 899 F.3d at 1021, 1034. The Government was shown the fabrication was a fabrication. It pressed it anyway — and then, on August 5, 2026, pressed it once more, in the one forum where the victim could not answer. That is the subject of the section that follows.

VII. THE AUGUST 5, 2026, FILING REFLECTS DELIBERATE INDIFFERENCE AND CONSCIOUS DISREGARD OF PETITIONER'S VICTIMS' RIGHTS — THE SAME FABRICATION, REPEATED WHERE THE VICTIM COULD NOT ANSWER

Here is the answer to the Government's silence in this case. It was never unable to respond. It was unwilling to respond where the victim could be heard. Everything the prior sections establish — DHS Supervisory Agent Shawn S. Gibson's fabrication, the officials' lack of authority, the notice they received and ignored — converges on a single filing.

By August 5, 2026, the Government had run out of excuses. It had recited the true investigation in its own 2018 filings, then spent years denying it. It had been told, repeatedly and in writing, that the narrative it substituted was false — a fabrication that originated with Agent Gibson and was adopted, republished, and pressed by the Office as its own. It had every record disproving that fabrication sitting in its own file. And with all of that before them, the same officials chose to deploy it one final time — calling this victim's claims "meritless" when the only thing "meritless" rested on was the fabrication itself, and doing so deliberately, in the one place the victim could not answer.

The vehicle they chose is telling. On August 5, 2026, in *United States v. McCormick*, No. 2:20-CR-00346(B)-DMG (ECF No. 864) — a criminal proceeding before the Honorable Chief Judge Dolly M. Gee, in which Petitioner is not a party,

has no standing, and has no voice — four officials of the United States Attorney's Office reached out of their own case and into his. AUSA Patrick Castañeda, First Assistant United States Attorney Bilal A. Essayli, AUSA Kathrynne Seiden, and AUSA Laura A. Alexander put this victim's status and his pending Crime Victims' Rights Act petitions squarely at issue — in a courtroom he could not enter — and told a federal judge that his documented claims were meritless and had been repeatedly rejected. Both representations were false. They were material. They were misleading. And the officials who made them knew, or had every means to know, that they were untrue when they made them. That is precisely why they made them here: in the one forum where the victim they were describing could not stand up and say otherwise.

Consider each point in turn. **They were false** because Petitioner's victims' rights claims have never been rejected on the merits—not once. The prior dismissals were jurisdictional, and a court without jurisdiction adjudicates nothing; it decides only that it cannot decide. *See Costello v. United States*, 365 U.S. 265, 285 (1961); Fed. R. Civ. P. 41(b) (a dismissal for lack of jurisdiction does not operate as an adjudication on the merits).

To say the claims were "repeatedly rejected" when no court reached them is not characterization; it is fabrication. **They were material** because they served one

purpose: to undermine this victim's status before a judge who had no reason to question them. **They were misleading** on the filing's face:

> **The August 5, 2026 filing, on its face (United States v. McCormick, No. 2:20-CR-00346(B)-DMG, ECF No. 864):**
>
> It branded Petitioner's claims "**broad allegations of government misconduct that courts have repeatedly rejected**" —
>
> — while conceding, in the same breath, that "**the government does not address them here in substance**."

Both cannot be true. A claim actually rejected on the merits does not need to be left "unaddressed in substance." The Office invoked prior dismissals it knew, or had the means reasonably to know, were jurisdictional — dismissals that rejected nothing — and in the same breath declined to defend that characterization. It wanted the benefit of "repeatedly rejected" without the burden of showing it. That is not advocacy. It is the deliberate deployment of a half-truth against a person who was not in the room.

And these officials knew better, because the truth was sitting in their own file. This Court's own April 4, 2018, Order (No. 2:17-cv-07748, Dkt. 13, at 2, Page ID #:210) had already recited Petitioner's communications with DHS Supervisory Special Agent Gibson conferring victim status, the OSS criminal investigation, the $20 million recovery, and the agreement to add Greenway as a victim. Petitioner had

answered the August 5, 2026, filing directly (No. 2:26-cv-05207, Dkt. 27) and had put the same misconduct before the Office months before that.

The records that disproved the Government's representations were its own. It advanced Agent Gibson's falsehood anyway — the falsehood that had already unlawfully stripped this victim of his rights, his status, and the restitution the law makes mandatory — while glossing over multiple documented, credible allegations of professional misconduct by its own officials, allegations that remain, to this day, undenied.

That is the difference between an official who *could not* have known and one who *knew and disregarded*.

Deliberate indifference and conscious disregard are not measured by the former; they are established by the latter. On this record, the standard is not approached. It is met, and it is exceeded. The Government knew. It had been told. It had the file. And it advanced that same false narrative anyway — the narrative built on Gibson's fabricated Colorado ruling, a ruling no court ever issued — telling another judge this victim's claims were meritless when its own file said the opposite: that he had been identified as a victim, that the investigation was real, and that over $20 million had been recovered. It did so against a victim who was not a party, in a

forum where he could not appear, before a judge who had no reason to suspect the account was untrue, material, and misleading.

And there is the heart of it. The Government's ability to file on August 5 is the answer to its silence in this case. It was never unable to respond here; it was unwilling to respond where the victim could be heard. A party that must silence the other side to prevail has already conceded it cannot prevail on a level field. It struck at this victim in the one forum he could not enter and fell silent in the one he could. That is not litigation. It is the conduct of a party that knows its position cannot survive an answer — and so it chose the only forum in which no answer was possible.

And it is not new. What happened on August 5, 2026, is not a single misstep; it is the most recent turn of a wheel that has been turning for years — Gibson's fabricated ruling (§ IV); the April 2, 2021, Order that gave that fabrication the force of a judgment it had no jurisdiction to enter (§ V); and the Office's repeated adoption of the same falsehood while acting in a capacity no immunity shields (§ VI). Each time, the same lie. Each time, in a forum the victim could not reach. The Ninth Circuit has a name for this. In *Lanuza v. Love*, it confronted a fabricated government document "used, over several years, to defraud the courts," and it refused to look away — warning that conduct left unremedied "would tempt others to do the same." 899 F.3d 1019, 1021, 1034 (9th Cir. 2018).

That warning appears to have been written for this case. The Government has done exactly what *Lanuza* condemned, over more years, to this victim — and now, by its silence, it asks this Court to ratify it. This Court should decline. The remedy for a lie the Government will not defend is not to let it stand; it is to strip it of the one thing it was built to obtain — the power to keep this victim from being heard.

VIII. SERVICE IS PERFECTED, THE FIVE-DAY LIMIT HAS LONG SINCE PASSED, AND THE SILENCE WAS A CHOICE

Petitioner served the United States following the filing of the Petition on May 14, 2026, and after the Government's June 2, 2026, objection re-served it in strict compliance with Rule 4(i) on June 24, 2026 — service on the Civil Process Clerk **and certified mail to the Attorney General**. (**Ex. A**.)

The one objection the Government ever raised has been answered twice over: once by law, because the rule it invoked does not apply, and once by act, because Petitioner satisfied it anyway. Petitioner effected Rule 4(i) service only to eliminate any conceivable objection — not because the summons-and-answer machinery of an ordinary civil suit governs a § 3771(d)(3) motion the statute commands the Court to "take up and decide … forthwith." He said so in writing, in his August 16, 2026, letter to Beck (**Ex. B**), enclosing the Attorney General Guidelines and inviting the Government to identify any provision requiring the service it demanded. It identified **none**, because there is **none**.

Here, then, is the final absurdity. The Government was owed no service, yet it was served, and served again. It was invited to name a single authority requiring any of it, and named none. It was given every opportunity to appear, and took none. A statute that commands decision "forthwith," and permits no continuance beyond five days, has sat untouched for months.

And the silence was a choice, not an incapacity: these officials filed against this victim on August 5, 2026 — they simply declined to do so here, where he could answer. The party the law charges with protecting the victim spent that time doing one thing only: striking at him where he could not respond, and running out his clock where he could.

That completed service is why this Application is ripe now. With proof of service of record and the Government's sole objection cured, no procedural obstacle remains, and the forthwith mandate is squarely presented: the five-day outer limit expired many multiples over, and it independently forecloses any request for additional time, because the statute permits none. The delay is not merely unreasonable; it is affirmatively barred by the statute's own text.

And so the record is closed, though the Government never lifted a hand to close it here. Every fact in the Petition stands unanswered. Every objection it raised has been cured or refuted. Every deadline the statute set has passed. There is nothing

left to brief, because the Government chose not to brief it; nothing left to contest, because it chose not to contest it — choosing instead to make its arguments where the victim could not respond. Nothing remains but the one thing the statute has commanded from the first day: that this Court take up the Petition and decide it, forthwith. Petitioner turns, finally, to the relief that record compels.

IX. RELIEF REQUESTED

The record leaves this Court with a narrow task and an uncontested one. And it leaves it with the answer to the question this Application opened with: the Government had so much to say about this victim on August 5 — in a courtroom he could not enter — and nothing to say in his own case, because it will not defend where it can be answered. A party that speaks against a victim where he cannot respond, and falls silent where he can, has not merely defaulted. It has chosen the forum of its attack to avoid a defense. That choice forecloses it.

This Application asks something antecedent and simple: that the Court recognize the Government's silence for what the law makes it — consent — and take up and decide the Petition forthwith, respecting, in the meantime, the orderly completion of the related-case determination now pending under General Order 08-05, § 5.2. Each form of relief requested below is either provided by the Crime Victims' Rights Act and reflected in the Attorney General Guidelines and the Justice Manual, or lies within this Court's inherent authority to declare the record before it.

Petitioner respectfully requests that the Court, pursuant to Local Rule 7-12 and 18 U.S.C. § 3771(d)(3):

(1) DEEM the Petition unopposed and CONSENTED TO, the Government having been served, advised in writing that its sole objection was baseless, afforded a cure of that objection, and having found the will to attack Petitioner's status in a collateral forum on August 5, 2026, yet having failed to appear, respond, or controvert a single fact here within the time the law allows — a failure the Court may, and should, deem consent under Local Rule 7-12;

(2) FIND that the Government has forfeited its opportunity to oppose the Petition, and hold it FORECLOSED AND ESTOPPED from raising, in this proceeding or any later stage of it, any objection — jurisdictional, procedural, evidentiary, or on the merits — that it could have raised in response and, by its silence, elected not to;

(3) TAKE UP AND DECIDE the Petition forthwith, as 18 U.S.C. § 3771(d)(3) commands — the statute's five-day limit having long since elapsed, service being complete and of record (Ex. A), and the Government having offered no ground to defer;

(4) DECLARE, consistent with the record set out in Section V, that the April 2, 2021 Order — having dismissed for want of subject-matter jurisdiction — exceeded

the bounds of authorized judicial action in reaching unwarranted, harmful, inflammatory, and discrediting findings against Petitioner on the merits that it had no authority to reach; that in doing so it performed an act not judicial in nature; and that those findings are therefore not entitled to preclusive effect;

(5) DECLARE, consistent with the record set out in Section VI, that the United States Attorney's Office for the Central District of California and its officials acted in an investigative and administrative capacity — not as prosecutors or advocates — in this matter, having had no charging authority, no supervisory role, and no part in the Operation Software Slashers criminal investigation and prosecution itself, which was conducted under seal by the United States Attorney's Office for the Western District of Missouri;

(6) RECOGNIZE, for purposes of the relief the Petition seeks, that Petitioner is a crime victim within the meaning of 18 U.S.C. § 3771(e)(2)(A), directly and proximately harmed by an offense committed by fraud or deceit under 18 U.S.C. § 3663A(c)(1)(A)(ii), whose rights under the Crime Victims' Rights Act and the Mandatory Victims Restitution Act have never been discharged or accorded;

(7) NOTE, FOR THE MANDATORY-RESTITUTION RELIEF THE PETITION SEEKS, that the assets from which that restitution is owed have now been identified of record: the seized-asset pool arising from the Operation Software Slashers investigation — in excess of $20 million — documented in the civil

forfeiture complaint verified under penalty of perjury by DHS/ICE Supervisory Special Agent Shawn S. Gibson and signed by AUSA James Curt Bohling, United States v. $442,992.97 in U.S. Currency, et al., No. 15-0079-CV-W-DGK (W.D. Mo.) (Ex. C) — assets the Government already holds and to which the Court may refer in ordering the mandatory restitution the Petition seeks under 18 U.S.C. §§ 3663A and 3664(d)(5);

(8) REFER any appropriate compliance issue under 18 U.S.C. § 3771(f) to the Department of Justice Victims' Rights Ombudsman or other proper supervisory authority, should the Court find such referral warranted on this record; and

(9) GRANT such other and further relief — declaratory, prospective, and administrative — as the Court deems just and proper; provided that nothing in this Application or the relief requested herein shall waive, release, or limit any separate claim, right, or remedy Petitioner may possess under any other statutory or common-law framework arising from the same conduct, all of which are expressly reserved.

Petitioner asks for none of the extraordinary. He seeks no damages, no vacatur, no finding of fraud upon the court, and no revision of any charging decision. He asks only for what the Crime Victims' Rights Act and the Mandatory Victims Restitution Act already guarantee him — and for a decision the statute has commanded from the first day. The Government answered where the victim could not speak, and fell silent where he could. On a record that complete, and an

opposition that absent by design, this is not a large request. It is the smallest one the law permits.

DATED: September 1, 2026,

Respectfully submitted,

GUSTAVO ESCAMILLA
1315 Highland Avenue
Glendale, California 91202
(818) 355-0062
gescamilla@ymail.com
Petitioner in Pro Se

CERTIFICATE OF COMPLIANCE (L.R. 11-6.1)

The undersigned, Petitioner Gustavo Escamilla, appearing pro se, certifies that the foregoing PETITIONER'S NOTICE AND APPLICATION OF NON-OPPOSITION TO DEEM THE PETITION UNOPPOSED AND TO TAKE UP AND DECIDE THE CVRA/MVRA PETITION FORTHWITH; MEMORANDUM OF POINTS AND AUTHORITIES contains _____ words, as counted by the word-processing program used to prepare it, and therefore complies with the word limit of Local Rule 11-6.1.

DATED: September 1, 2026.

GUSTAVO ESCAMILLA
1315 Highland Avenue

Glendale, California 91202
(818) 355-0062
gescamilla@ymail.com
Petitioner in Pro Se

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: September 1, 2026,



GUSTAVO ESCAMILLA
1315 Highland Avenue
Glendale, California 91202
(818) 355-0062
gescamilla@ymail.com
Petitioner in Pro Se