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BY

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

GUSTAVO ESCAMILLA, an individual; and GREENWAY NUTRIENTS, INC., a Colorado corporation,

Plaintiffs,

v.

DEPARTMENT OF HOMELAND SECURITY; THE UNITED STATES OF AMERICA; and DOES 1 through 50, inclusive,

Defendants.

Case No. 2:17-cv-07748-ODW-MRW

PLAINTIFF'S EMERGENCY NOTICE AND APPLICATION TO DISQUALIFY UNDER 28 U.S.C. §§ 455(a), 455(b)(1), 455(b)(5)(i), AND 455(b)(5)(iii); MEMORANDUM OF POINTS AND AUTHORITIES

DISQUALIFICATION IS MANDATORY AND NON-WAIVABLE — THE JUDGE WHOSE JUDGMENT IS CHALLENGED IS A NAMED RESPONDENT (No. 2:26-cv-09383-AB). 28 U.S.C. § 455(b)(5)(i), (e); *In re Murchison*, 349 U.S. 133 (1955).

Hearing Date: None set (see Notice)

Hon. Otis D. Wright, II

TO THE HONORABLE COURT, THE CLERK OF COURT, AND ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Plaintiff Gustavo Escamilla, appearing in his individual capacity and in propria persona, hereby applies, on an emergency basis, for the disqualification of the Honorable Otis D. Wright, II from this action under 28 U.S.C. §§ 455(a), 455(b)(1), 455(b)(5)(i), and 455(b)(5)(iii), and for the return of this action to the Clerk for reassignment under General Order No. 26-11, § II.F.

This Application is filed before, and in connection with, Plaintiff's concurrently filed Motion to Set Aside the April 4, 2018, Judgment of Dismissal for Fraud on the Court Pursuant to Fed. R. Civ. P. 60(d)(3) (the "Rule 60(d)(3) Motion").

Disqualification under 28 U.S.C. § 455(b) is mandatory and cannot be waived. 28 U.S.C. § 455(e). This Application seeks no relief against any party. It asks only that a statutory duty owed by the Court itself be discharged — a duty that exists whether or not any party moves. Plaintiff therefore does not set a hearing date. Plaintiff is serving the Government concurrently with this filing, invites its written position, and will supplement this Application upon any response. (*See* Declaration of Gustavo Escamilla Regarding Local Rule 7-3, filed with the Rule 60(d)(3) Motion.)

This Application is based on this Notice, the Memorandum of Points and Authorities, the records and files of this action and of the related proceedings identified below, and such further matters as may properly come before the Court. Plaintiff asserts no claim under the Crime Victims' Rights Act in this action, and this Application seeks none.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. DISQUALIFICATION IS MANDATORY: NO JUDGE MAY SIT IN JUDGMENT OF HIS OWN CAUSE

A judge cannot sit in judgment of his own cause. 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).

The concurrently filed Rule 60(d)(3) Motion asks whether the April 4, 2018, Judgment that Judge Wright entered was procured by a court ruling that no court ever made, deliberately fabricated by a DHS agent and used to suspend a federally identified victim's participation in an active federal criminal investigation, with deliberate indifference to Plaintiff's constitutional rights to due process and to be treated with fairness — as Judge Wright was repeatedly shown by irrefutable documentary evidence — and substantially compounded by multiple instances of unaddressed and undenied allegations of professional misconduct before the same Court.

Judge Wright is a named Respondent, in his official capacity, in the pending proceeding that challenges that same Judgment — resting on this Court's ruling that it lacked subject-matter jurisdiction over Plaintiff's underlying civil-rights action under 42 U.S.C. § 1983 and the Federal Tort Claims Act — and the April 2, 2021, Order that transposed that defective jurisdictional ruling onto Plaintiff's Crime Victims' Rights Act petition as its stated legal basis. (No. 2:26-cv-09383-AB, Dkt. 1.)

He has already recused himself from the related proceeding that rests on it and on the same underlying, unaddressed operative facts. (No. 2:26-cv-05207, Dkt. 49, Aug. 26, 2026.) The moment he became a Respondent to the challenge, his disqualification from deciding it became mandatory under 28 U.S.C. § 455(b)(5), 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.

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

First, he may not decide the Rule 60(d)(3) Motion; § 455(b)(5) commands it, and § 455(e) forbids any waiver.

Second, he may not decide any question on the way to it, including compliance with the Local Rules, because once disqualification is required, a judge may perform only the "ministerial duties necessary to transfer the case to another judge." *Moody v. Simmons*, 858 F.2d 137, 143 (3d Cir. 1988). The proper course is not for Judge Wright to decide anything, but to take the single step the law leaves open to him: to step aside, and to return this action to the Clerk for reassignment.

A. Judge Wright Is a Respondent to the Challenge to His Own Judgment, and Disqualification Is Mandatory and Non-Waivable Under 28 U.S.C. §§ 455(b)(5) and 455(e)

A threshold ground, not present when Plaintiff last sought disqualification in this action, now controls. On August 21, 2026, Plaintiff filed No. 2:26-cv-09383-AB, naming "OTIS D. WRIGHT, II, in his official capacity as a United States District Judge," as a Respondent, and challenging the April 4, 2018, Judgment and the April 2, 2021, Order. (No. 2:26-cv-09383-AB, Dkt. 1, §§ III.A, G, at 16–22, 55–59.)

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 an objective fact. Unlike the appearance ground of § 455(a), the grounds enumerated in subsection (b) **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 a

ground arising under subsection (a) may be waived, and only after full disclosure on the record. *Id.*

Judge Wright's own orders define the limits of his authority here. In 2018 he held that he lacked subject-matter jurisdiction over every claim in this action. (Dkt. 13 at 10, 13, 22, Page ID #:218, #:221, #:230.)

In 2021, he transposed that same § 1983 defective jurisdictional ruling onto Plaintiff's Crime Victims' Rights Act petition ("The Court reaffirms its April 4, 2018 Order"), never applying 18 U.S.C. § 3771(d)(3), and, in an order dismissing for want of jurisdiction, faulted Plaintiff for failing to "identify the existence of ***any*** criminal proceeding" while referring to his account of what became of the sealed Western District of Missouri prosecution as "***speculation pulled from the ether***." (No. 2:21-cv-01910-ODW, Dkt. 10, Page ID #:293–294.) "Without jurisdiction the court cannot proceed at all in any cause." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998).

Those very acts are now the subject of a pending proceeding in which Judge Wright is a named Respondent. (No. 2:26-cv-09383-AB, Dkt. 1, §§ III.A, G, at 16–22, 55–59.) By his own conduct, he is a party to the controversy this Motion presents. 28 U.S.C. § 455(b)(5)(i).

The only power that survives in this action is the Court's inherent power to purge fraud from its own judgment. Fed. R. Civ. P. 60(d)(3); *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944). That power belongs to the Court. It cannot be exercised by the judge whose disclaimed jurisdiction produced the orders under challenge, and who is himself a party to that challenge. *In re Murchison*, 349 U.S. 133, 136 (1955). Beyond the ministerial act of returning this action to the Clerk, there is nothing left for Judge Wright to decide.

At a minimum, Judge Wright is "known by the judge to have an interest that could be substantially affected by the outcome of the proceeding." 28 U.S.C. § 455(b)(5)(iii). A ruling on the Rule 60(d)(3) Motion will determine the validity of

the Judgment whose use against Plaintiff is the subject of the pending proceeding in which Judge Wright is a Respondent.

This is the oldest principle in the law of judicial disqualification, and it is rooted in the Due Process Clause. "**[N]o** 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." *Murchison*, 349 U.S. at 136.

The Supreme Court reaffirmed the principle in *Williams v. Pennsylvania*, holding that due process is violated where a judge had significant, personal involvement, as a prosecutor, in a critical decision in the case before him, 579 U.S. 1, 136 S. Ct. 1899, 1905 (2016), and that an unconstitutional failure to recuse is structural error, not subject to harmless-error review, *id.*, 136 S. Ct. at 1909.

Where the judge is a Respondent to the very challenge before him, the principle applies with its greatest force. This Application is therefore **not** a matter of discretion or reconsideration.

B. No Prior Ruling Decided This Ground

Three rulings are said to stand in the way of this Application. None of them decided it.

The 2021 denial. Plaintiff's 2021 motion to disqualify was denied on the record as it then stood. (Dkts. 14–17.) Every ground presented here postdates that ruling: Judge Wright's designation as a Respondent (Aug. 21, 2026); his recusal from the related proceeding (Aug. 26, 2026); the forfeiture complaint verified by DHS Special Agent Gibson, first placed before a federal court on September 10, 2026; the Government's August 5, 2026, redeployment of the fabrication; and the concurrently filed Rule 60(d)(3) Motion itself, which places Judge Wright's Judgment, and his handling of the challenges to it, directly at issue.

The August 14, 2026, denial. The denial of Plaintiff's recusal motion in No. 2:26-cv-05207 (Dkt. 30) likewise preceded the ground that now controls. Judge

Wright was named a Respondent on August 21, 2026 (No. 2:26-cv-09383-AB, Dkt. 1), seven days later. Section 455(b)(5)(i) was not, and could not have been, before that court. A mandatory, non-waivable ground that arose after a ruling is not decided by it. 28 U.S.C. § 455(e).

The 2022 Ninth Circuit disposition. Nor does the Ninth Circuit's March 24, 2022, memorandum disposition control. That appeal arose from No. 2:21-cv-01910, not from this action; this Judgment was never before the panel. The panel affirmed the 2021 dismissal of Plaintiff's crime-victim petition on law-of-the-case grounds, and its only reference to this action confirms the point: it rejected the contention "that the district court erred by failing to act on allegations of attorney wrongdoing that occurred in a different action." *Escamilla v. United States*, No. 21-55417, 2022 WL 874647, at *1 (9th Cir. Mar. 24, 2022).

The "different action" is this one. The Ninth Circuit did not decide whether this Judgment was procured by fabrication. It held that the question belonged here.

To the extent the panel rejected a contention of bias, it did so on the 2021 record, in a different case, before two things changed.

First, *In re Davis*, Nos. 24-3090 & 24-3092, 146 F.4th 710 (9th Cir. 2025) (as amended Aug. 1, 2025), now binding Ninth Circuit authority, supplied a fresh and indisputable procedural pathway, previously unavailable, for crime victims to assert their rights, including restitution under the Mandatory Victims Restitution Act for offenses committed by fraud or deceit, 18 U.S.C. § 3663A(c)(1)(A)(ii), a pathway the defective 2021 jurisdictional order never applied. Congress directed that a victim's rights "shall be asserted . . . if no prosecution is underway, in the district court in the district in which the crime occurred." 18 U.S.C. § 3771(d)(3). The 2021 order borrowed a § 1983 jurisdictional ruling from this action, faulted the victim for failing to identify a criminal proceeding the Court had itself recited, and closed the door Congress opened.

Second, and dispositively, Judge Wright became a Respondent. 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 Respondent to any proceeding. He is now.

Three rulings, and not one of them reached the question this Application presents. And the conduct that now requires disqualification did not exist when any of them issued.

From December 2025 through February 2026, Plaintiff notified the Office in writing, directly to First Assistant United States Attorney Bilal A. Essayli, of the fabrication, of the Government's due-process violations and its mandatory duties to disclose and to protect, and of the ongoing deprivation of his rights. (No. 2:26-cv-09383-AB, Dkt. 2, Ex. P; No. 2:26-cv-05207, Dkt. 9, Exs. P–U.)

On January 12, 2026, he requested protection. (No. 2:26-cv-05207, Dkt. 9, Ex. R, Page ID #:694–703.) The Office answered none of it on the merits; its Victim Witness Unit replied that Plaintiff did not appear to be "an identified crime victim in a federal criminal proceeding." (No. 2:26-cv-09383-AB, Dkt. 1 at 26, Page ID #:26; No. 2:26-cv-05207, Dkt. 9, Exs. P–U.)

Then, on August 5, 2026, more than a year after *Davis*, the same Office cited that same pre-*Davis*, jurisdiction-only disposition, from a different case, as proof that Plaintiff's claims had been "repeatedly rejected." (No. 2:20-CR-00346(B)-DMG, ECF No. 864 at 4–5, Page ID #:11427–11428.)

That disposition rests, through this Judgment, on DHS Agent Gibson's fabrication and on multiple documented instances of undenied allegations of professional misconduct, originated and carried forward by the same Office under United States Attorney Nicola T. Hanna and Acting United States Attorney Tracy L. Wilkison, AUSA Castañeda's former supervisors, and it was AUSA Castañeda who signed the August 5 filing. (*See id.*, ECF No. 82 at 2, Page ID #:540.) The

panel sent the question here. The Government now cites the panel as if it had answered it.

None of that conduct is stale, because none of it had happened. No victim can be charged with knowing, in 2018 or 2021, what the Government chose to do in 2026. Reliance on a fabricated premise and a superseded procedural ruling, by officials who knew or should have known both, is not the residue of an old error.

It is a fresh deprivation of due process, and an ongoing violation of it, renewed with each notice left unanswered and each time the Judgment is invoked, and it is one more reason the judge whose Judgment is invoked cannot be the one to decide whether it stands.

II. THE DOCUMENTED RECORD

A. The April 4, 2018, Judgment

On April 4, 2018, Judge Wright dismissed this action, brought under 42 U.S.C. § 1983 and the Federal Tort Claims Act, for lack of subject-matter jurisdiction over every claim, and entered dismissal "with prejudice as to all Defendants." (Dkt. 13 at 10, 13, 22, Page ID #:218, #:221, #:230.)

The tort claims fell on two jurisdictional grounds.

The first, failure to exhaust, rested on the Government's declaration that ICE had "no record of a formal complaint." (*Id.* at 11, Page ID #:219.)

The second, the discretionary-function bar, applied even if Plaintiffs could establish exhaustion, and rested expressly on "the negative judgment in the Colorado action." (*Id.* at 11, 13, Page ID #:219, #:221.)

That premise was the ruling DHS Special Agent Shawn Gibson reported: that a court had ruled against Plaintiff's company, Greenway, and in favor of Selakovic "in regards to the assertion of the Greenway trademark."

No court ever made that ruling, as Plaintiff documented in his June 2025 complaint to the DHS Office of Inspector General against Agent Gibson and Russell

Simons, Resident Agent in Charge of the DHS Office of Professional Responsibility, which invoked 18 U.S.C. §§ 241, 242, and 1519. (No. 2:26-cv-09383-AB, Dkt. 19, Ex. B.) Plaintiff cites that complaint for what was reported, and when, not for adjudication of those offenses.

B. The April 2, 2021, Order

In 2021, Plaintiff petitioned to enforce his rights as a crime victim. Judge Wright dismissed the petition by reaching back to this action: "The Court reaffirms its April 4, 2018 Order." (No. 2:21-cv-01910-ODW, Dkt. 10, Page ID #:293–294.)

He never applied 18 U.S.C. § 3771(d)(3). And in an order dismissing for want of jurisdiction, he faulted Plaintiff for failing to "identify the existence of any criminal proceeding" — an investigation he had recorded as fact in his own 2018 Order (Dkt. 13 at 2–3, Page ID #:210–211) — and referred to Plaintiff's account of what became of that sealed prosecution as "speculation pulled from the ether." (No. 2:21-cv-01910-ODW, Dkt. 10 at 1–2, Page ID #:293–294.)

C. The Two Orders Are Irreconcilable on the Dispositive Question

On the one question on which a crime victim's rights turn, whether the underlying criminal proceeding exists, the same judge's two orders cannot be reconciled:

> **The two orders, side by side:**
>
> **April 4, 2018, Order** (Dkt. 13 at 2, Page ID #:210) — recited, citing the Government's own motion, that the Greenway investor defendants had been "subject to extensive investigation for criminal trademark infringement"; that ICE and the United States Attorney's Office had recovered more than $20 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** (No. 2:21-cv-01910, Dkt. 10 at 1–2, Page ID #:293–294) — faulted Plaintiffs for failing to "identify the existence of any criminal proceeding that would grant Plaintiff rights," in the same order that quoted their identification of "criminal proceedings being conducted in the Western District of Missouri" and noted that "the file is sealed"; referred to their account of what became of that sealed prosecution as "speculation pulled from the ether"; and concluded that they had "supplied no basis to establish any rights under the Crime Victims' Rights Act."

In 2018, the Court wrote the investigation into the record in the Government's own words. In 2021, it faulted the victim for failing to identify it.

Plaintiff does not ask Judge Wright to resolve that contradiction; it is the subject of the Rule 60(d)(3) Motion and of No. 2:26-cv-09383-AB. Plaintiff identifies it here for the limited purpose of the disqualification analysis: it is the documented fact that bears most directly on whether a reasonable observer would question the impartiality of the judge now asked to decide whether his own Judgment was procured by fraud.

D. The Same Documented Showing Was Placed Before Judge Wright Five Times Over Seven Months and Never Reached

First — March 29, 2021. Plaintiffs' counsel filed the documentary proof that no Colorado court had ruled for Selakovic and against Greenway on its trademark claims, together with the Colorado ruling that did address them. (No. 2:21-cv-01910, Dkt. 9, Exs. A–C; *see* Dkt. 14-1 ¶ 10, Page ID #:254.)

Four days later, before the Government had appeared, been required to answer, or filed any responsive pleading, the Court "reaffirm[ed] its April 4, 2018 Order" and "sua sponte dismisse[d]" the petition without addressing that evidence. (No. 2:21-cv-01910, Dkt. 10 at 2, Page ID #:294.)

Second — July 2021. Plaintiffs' counsel placed the same proof before the Court again, under oath, in support of Plaintiffs' motion to disqualify. (Dkts. 14, 14-1.)

On July 19, 2021, the Office answered in this action, under Acting United States Attorney Tracy L. Wilkison. It took up Plaintiffs' status as victims and denied it, in its own voice, on a recast of Gibson's fabrication: that "in August 2015, defendants told plaintiff they would not move forward with the criminal infringement action as to plaintiffs given that the civil trademark infringement suit did not reach a judgment on the merits." (Dkt. 15 at 3, Page ID #:321 (citations omitted); *see* Part III.A, *infra*.) That motion was referred to another judge and denied. (Dkts. 16, 17.) The Office's denial, and the recast fabrication on which it rested, remained on the docket of this action.

Third — September 18, 2021. Plaintiffs' counsel moved to set aside this Judgment for fraud on the court. (Dkt. 18.) Two days later, before the Government responded, the Court struck the motion for "failure to comply with Local Rule 7-3." (Dkt. 20, Page ID #:541.)

Fourth — October 2021. After attempting to meet and confer (Dkt. 24 at 3, Page ID #:762), counsel refiled. (Dkt. 21.) The Government's opposition did not deny the fabrication. It argued Local Rules 7-3 and 11-6, and argued that the fraud, "*assuming arguendo* that [one] existed, … would not 'affect the outcome of the case.'" (Dkt. 23 at 2, 5, Page ID #:750, #:753.)

Fifth — November 1, 2021. Plaintiffs' reply placed the documented professional misconduct and Gibson's fabrication before the Court again. (Dkt. 24.) Eight days later, the Court struck the motion by a one-page form order, with a single box checked: "Failure to comply with Local Rules 7-3 and 11-6." (Dkt. 25, Page ID #:776.)

Five filings over seven months. **No** ruling on whether this Judgment was procured by fabrication. **No** court has ever decided it. The jurisdictional defect at

the center of the 2021 dismissal — that the Court lacked subject-matter jurisdiction and authority to determine the rights of the victims of a prosecution fixed in the Western District of Missouri, Fed. R. Crim. P. 18; 18 U.S.C. § 3771(d)(3), and that a § 1983 jurisdictional ruling could not be transposed onto a Crime Victims' Rights Act petition — has never been examined by any court, and Plaintiff has never waived or forfeited it. (No. 2:26-cv-09383-AB, Dkt. 1, at 8–9, 13–14, 16–22.)

E. The 2026 Proceedings and Judge Wright's Recusal

On May 22, 2026, Plaintiff's crime-victim petition, No. 2:26-cv-05207, was transferred to Judge Wright as related to this action. (No. 2:26-cv-05207, Dkt. 11.) On August 21, 2026, Plaintiff filed No. 2:26-cv-09383-AB, naming Judge Wright, in his official capacity, as a Respondent and challenging the April 4, 2018, Judgment and the April 2, 2021, Order. (No. 2:26-cv-09383-AB, Dkt. 1, §§ III.A, G, at 16–22, 55–59.)

Three months later, on August 24, 2026, Plaintiff applied for Judge Wright's disqualification in No. 2:26-cv-05207. (No. 2:26-cv-05207, Dkt. 47.) Fifty minutes after that application was entered on the docket, Judge Wright recused himself, and the case was reassigned to the Honorable André Birotte Jr. (*Id.*, Dkt. 49, Aug. 26, 2026.) No. 2:26-cv-09383-AB is likewise before Judge Birotte.

Concurrently with this Application, Plaintiff has filed the **Rule 60(d)(3) Motion**. It rests on evidence first placed before a federal court on September 10, 2026 — the federal forfeiture complaint, No. 15-0079-CV-W-DGK, verified by Gibson under penalty of perjury, which establishes under oath that the investigation his fabrication suspended was real (No. 2:26-cv-09383-AB, Dkts. 18, 19, Ex. C), the same investigation whose sealed disposition Judge Wright dismissed as "speculation pulled from the ether" (No. 2:21-cv-01910, Dkt. 10 at 1–2, Page ID #:293–294) — and on the conduct of the same Office, which, rather than address the fabrication, conveniently glossed over it and, in doing so, indirectly redeployed

it on August 5, 2026, in a filing made through First Assistant United States Attorney Bilal A. Essayli and AUSAs Patrick Castañeda, Laura A. Alexander, and Kathrynne Seiden, and signed by AUSA Castañeda. (*United States v. McCormick*, No. 2:20-CR-00346(B)-DMG, ECF No. 864 at 1–2, 4–5, Page ID #:11424–11425, #:11427–11428.)

III. DISQUALIFICATION IS INDEPENDENTLY WARRANTED UNDER 28 U.S.C. § 455(a)

A judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). The standard is objective: whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned. *United States v. Holland*, 519 F.3d 909, 913 (9th Cir. 2008); *Clemens v. U.S. Dist. Ct.*, 428 F.3d 1175, 1178 (9th Cir. 2005).

The statute's goal "is to avoid even the appearance of partiality." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988) (internal quotation marks omitted). What matters "is not the reality of bias or prejudice but its appearance." *Liteky v. United States*, 510 U.S. 540, 548 (1994).

Due process requires "a 'fair trial in a fair tribunal,' … before a judge with no actual bias against the defendant or interest in the outcome of his particular case," *Bracy v. Gramley*, 520 U.S. 899, 904–05 (1997) (quoting *Withrow v. Larkin*, 421 U.S. 35, 46 (1975)), and "justice must satisfy the appearance of justice," *Offutt v. United States*, 348 U.S. 11, 14 (1954).

In 2021, the Government invoked *Liteky* to argue that "expressions of impatience, dissatisfaction, annoyance, and even anger" do not establish the appearance of bias. (Dkt. 15 at 5, Page ID #:323 (quoting *Liteky*, 510 U.S. at 555–56).)

That principle is not in dispute, and it does not control here. *Liteky* holds that judicial rulings and remarks support disqualification when they reveal "such a high degree of favoritism or antagonism as to make fair judgment impossible." 510 U.S. at 555.

The circumstance here is not a stray expression of annoyance. It is a documented contradiction between the same judge's two orders on the dispositive question; the misuse of DHS Agent Gibson's fabrication, alongside multiple documented instances of undenied allegations of professional misconduct, the sole underlying basis for the continuing deprivation of Plaintiff's due process, which has negatively impacted the victim's rights, restitution, and status; and a Judgment now challenged in a proceeding in which that judge is a Respondent.

Judge Wright has already stepped aside from a proceeding resting on this Judgment — within fifty minutes of an application raising these same grounds. (No. 2:26-cv-05207, Dkts. 47, 49.)

Nothing distinguishes this action, except that here the challenge is to the Judgment directly. A reasonable observer who knows that the judge stepped aside from the case that rests on this Judgment would not understand why he should decide whether the Judgment itself was procured by fraud.

That appearance does not rest on inference. The conduct is documented, and it is now the subject of the pending proceeding in which Judge Wright is a Respondent. Having declared the Court without subject-matter jurisdiction, the April 2, 2021, Order went on to make findings of fact and credibility against the victim — conduct that "carries the courts beyond the bounds of authorized judicial action," *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998), and that Plaintiff has shown of record to be an act not judicial in nature, entitled to no preclusive effect. (No. 2:26-cv-09383-AB, Dkt. 18, § V, at 20–24, Page ID #:860–864; *see* No. 2:26-cv-05207, Dkt. 47, § VII-B, at 29–31, Page ID #:1221–1223.) A

reasonable observer would not expect the judge whose conduct is under that challenge to decide this one.

A. 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. When a federal court lacks subject-matter jurisdiction, "the only function remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co.*, 523 U.S. at 94 (quoting *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1869)). Anything more "carries the courts beyond the bounds of authorized judicial action and thus offends fundamental principles of separation of powers." *Id.*

The April 2, 2021, Order dismissed for want of jurisdiction, reaching back to this action. That was the entirety of the Court's power. From an order that could lawfully do nothing but dismiss, the Court faulted Plaintiff for failing to "identify the existence of any criminal proceeding that would grant Plaintiff rights," and referred to his account of what became of the sealed Western District of Missouri prosecution as "speculation pulled from the ether." (No. 2:21-cv-01910, Dkt. 10 at 1–2, Page ID #:293–294.)

It did so against its own record. In 2018, the same Court had recited that very investigation and the Government's agreement that Greenway "would be added as a victim in the government's case." (Dkt. 13 at 2, Page ID #:210.) The victim did not fail to identify a criminal proceeding. The Court had already identified it.

The Government then made that reach its own and did so by rewriting the fabrication itself. Gibson gave one reason for suspending the investigation: a court had ruled for Selakovic against Greenway on the Greenway trademark. The Office never repeated that reason to this Court. It replaced it, twice, each time with a reason Gibson never gave.

What Agent Gibson said: the only reason given (No. 2:26-cv-05207, Dkt. 9, Ex. I):

October 28, 2016: "[W]e have been advised that on August 17, 2015 a District Court found in favor of Selakovic against Greenway Nutrients in regards to the assertion of the Greenway trademark."

November 21, 2016: "[B]ecause of the court decision, in a case you were a party to in Colorado, [we] would not be able to file charges at this time."

What the Office told this Court in 2018: "ownership in doubt" (Dkt. 9 at 11, 22, Page ID #:132, #:143):

The Colorado dismissal **"leaves plaintiffs' valid ownership of Greenway's trademarks in doubt,"** and ICE and USAO-MO, **"in their discretion, made the reasoned decision that they would not resume their investigation."**

What the Office told this Court in 2021: "not a judgment on the merits" (Dkt. 15 at 3, July 19, 2021, Page ID #:321 (citations omitted)):

"Judge Wright correctly noted that plaintiffs could not identify any criminal proceeding supporting their rights as victims since, in August 2015, defendants told plaintiff they would not move forward with the criminal infringement action as to plaintiffs given that the civil trademark infringement suit did not reach a judgment on the merits."

Wilkison and USAO-CDCA officials knew, or reasonably should have known, that Gibson's October 28, 2016, email, sent from his government-issued email address, rested on a ruling he fabricated, one contradicted by the publicly available court records that United States Attorney Nicola T. Hanna's Office, through AUSA Grace Y. Park, itself placed before this Court. (Dkt. 9-2, Ex. 3, at 24–26, Page ID #:171–173.)

Gibson said nothing about trademark ownership, and nothing about a judgment on the merits. His only stated reason was a ruling that no court ever made: one in favor of Selakovic and against Plaintiff's company, Greenway, on Greenway's civil trademark-infringement claims. That was the whole of it.

The Office could not defend that reason, because the Colorado docket it filed itself refuted it. (*Id.*) So it substituted others: "ownership in doubt" in 2018, to win dismissal, and "did not reach a judgment on the merits" in 2021, to defend it.

Neither was ever the reason the investigation was suspended. One fabricated reason, recast twice, each time to fit what the Office needed to prevail.

That is not advocacy. It is the knowing substitution of a false premise to procure and preserve a judgment, which is fraud on the court. And when the victim objected to the finding that his account was "speculation pulled from thc ethcr," thc Office dismissed it as mere "impatience." (Dkt. 15 at 5, Page ID #:323.)

The Ninth Circuit has condemned this exact species of misconduct. In *Lanuza v. Love*, an official of U.S. Immigration and Customs Enforcement, the same DHS component that employed Gibson, "forged and submitted evidence in a deportation proceeding to deprive an individual of his right to relief." 899 F.3d 1019, 1028 (9th Cir. 2018).

The court's summation fits this record without alteration: "At its core, this case is about a lie, and all the ways it was used, over several years, to defraud the courts." *Id.* at 1034. Here too the lie was a document fabricated by a DHS/ICE official. Here it was a purported court ruling, a graver assault on judicial integrity than the forged agency form in *Lanuza*.

Here too it was used over several years: in 2016, to suspend a federally identified victim's participation in an active federal criminal investigation; in 2018, recast as "ownership in doubt," to win dismissal; and in 2021, recast as "did not reach a judgment on the merits," to defend that dismissal.

And here, as there, the Government did not correct it. In *Lanuza*, the Government "did not take any action against Love until after this lawsuit was filed" by his victim. *Id.* at 1022. Here, the Office has taken no action at all. It adopted the fabrication and defended it.

The Ninth Circuit spoke directly to the Office's role: "Government attorneys are given great power, and with that power comes great responsibility. These attorneys represent the United States, and when they act, they speak for our government." *Id.* at 1034.

The right at stake is the "right to proceedings free from false and fabricated evidence knowingly presented against them. When that right is denied, a real harm is inflicted both on society, which loses faith that its government plays fair, and the individual who suffers directly." *Id.* at 1033 (quoting government press release). Failing to remedy such conduct "would tempt others to do the same." *Id.* at 1034. That is what happened here.

On August 5, 2026, the Office turned the Judgment it had procured against the victim himself. In *United States v. McCormick*, No. 2:20-CR-00346(B)-DMG, a prosecution to which Plaintiff is not a party, the Government filed "by and through its counsel of record, the First Assistant United States Attorney for the Central District of California and Assistant United States Attorneys Patrick Castañeda, Laura A. Alexander and Kathrynne Seiden." (ECF No. 864 at 1, Page ID #:11424.)

The signature block names First Assistant United States Attorney Bilal A. Essayli; AUSA Castañeda signed. (*Id.* at 2, Page ID #:11425.)

The filing told Chief Judge Gee that Plaintiff's "separate, years-long civil litigation and petitions under the Crime Victim Rights Act" "all . . . involve broad allegations of government misconduct that courts have repeatedly rejected." (*Id.* at 4, Page ID #:11427.)

It described this Judgment as "dismissing with prejudice" Plaintiff's complaint, without disclosing that the Court dismissed for want of subject-matter jurisdiction. (*Id.*)

It swept in the Crime Victims' Rights Act petition then pending in this Court, No. 2:26-cv-05207, as containing "essentially the same broad allegations of alleged government misconduct that have been rejected by prior courts." (*Id.* at 5, Page ID

#:11428.) And in the same paragraph it conceded that "the government does not address them here in substance." (*Id.*)

Both cannot be true. The characterizations were false, material, and misleading. No court has ever adjudicated the misconduct on the merits (Part II.D, *supra*), and the pending petition had been decided by no one. Essayli, AUSAs Castañeda, Seiden, and Alexander, and the Office knew, or reasonably should have known, as much.

On December 18, 2025, Essayli was notified in writing of the fabrication, of documented and undenied instances of professional misconduct, and of retaliation. (No. 2:26-cv-09383-AB, Dkt. 2, Ex. P.) And the filing itself cited the pending petition by case number, the petition that documents Gibson's fabrication. (ECF No. 864 at 5, Page ID #:11428 (citing No. 2:26-cv-05207).)

The Office made these statements against a federally identified crime victim who was not a party and could not answer in that forum, about a Crime Victims' Rights Act claim pending before this Court.

That is not the residue of an old wrong. It is a fresh use of a Judgment procured by fabricated evidence, by officials who held the record and the notice, and it is an ongoing due-process violation in its own right. It renews the continuing due-process deprivation this Application and the Motion seek to remedy.

Set the Court's reach beside what it declined to do, and the two cannot be reconciled. Between March 29 and November 1, 2021, the Court was shown five times that the Colorado "ruling" on which this Judgment rested was never entered, and was handed the ruling that was, Chief Judge Krieger's, denying Selakovic's motion. (Part II.D, *supra*.)

It did not examine the fabrication. It did not correct the record. It would not exercise the power it had, the inherent power to purge fraud from its own Judgment, yet it reached past the jurisdiction it had disclaimed to brand the victim's account fiction. A judge who was not present at the meeting with Agent Gibson, and had no

knowledge of what was said there, found the power to discredit the victim over it, and none to examine the fabrication placed before him.

The direction of the reach is the heart of the matter. Before the Court lay a documented showing that USAO-CDCA officials had placed a fabricated court ruling and misleading sworn declarations before it, a showing the Government, when it answered, assumed *arguendo* rather than denied. (Dkt. 23 at 5–6, Page ID #:753–754.)

The Court did not reach past its jurisdiction to address that showing. It reached past its jurisdiction to discredit the victim, in a published order of a sitting federal judge, carrying the full weight of that office, that branded his account "speculation pulled from the ether."

The harm of that finding did not depend on intent, and Plaintiff ascribes none and asks the Court to find none. He does not need to. The appearance is objective and complete on the face of the record. The Office supplied the premise and defended the reach. A neutral judge who lacks jurisdiction dismisses and says no more, and the judge who did more cannot now decide whether the premise was fabricated.

B. The August 18, 2026, Order Illustrates the Concern

Before his recusal in No. 2:26-cv-05207, Judge Wright struck Plaintiff's filings, including his application to have the petition taken up and decided forthwith, faulting Plaintiff for failing to cite legal authority that Local Rule 7-3 does not apply to motions in actions filed under the Crime Victims' Rights Act. (No. 2:26-cv-05207, Dkt. 43.)

The authority the order found absent appeared in the very Notice it cited: 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 Acts of Congress, Fed. R. Civ. P. 83(a)(1). (No. 2:26-cv-05207, Dkt. 37 at 14–15, Page ID #:999–1000.)

The authority the Court called missing was in the document the Court was citing. And the requirement it enforced could not be met: the Government had disclaimed service by letter, had been re-served in strict compliance with Rule 4(i) on June 24, 2026, and had never appeared. (*Id.* at 16, Page ID #:1001.)

Plaintiff placed the proof of completed service before Judge Wright in his August 21, 2026, response to the Court's order to show cause. (No. 2:26-cv-05207, Dkt. 44.) A victim cannot confer with a party that will not enter his case. Whatever any single ruling might be defended as in isolation, the cumulative appearance is what § 455(a) exists to address.

C. The Government Argued Against the Victim Where He Could Not Answer

The Government's conduct sharpens the appearance. When Plaintiff moved in 2021 to set aside this Judgment for fraud on the court, the Government did not deny the fabrication; it assumed it *arguendo* and argued that it would not "affect the outcome of the case." (Dkt. 23 at 5–6, Page ID #:753–754.) It has not answered on the merits in either related proceeding.

Yet on August 5, 2026, in *United States v. McCormick*, a criminal proceeding to which Plaintiff is not a party and in which he has no right to be heard, the Government, by and through First Assistant United States Attorney Bilal A. Essayli and AUSAs Patrick Castañeda, Laura A. Alexander, and Kathrynne Seiden, invoked this Judgment, described Plaintiff's "civil litigation and petitions" as "ill-fated," "all of which involve broad allegations of government misconduct that courts have repeatedly rejected," and stated that "the government does not address them here in substance." (No. 2:20-CR-00346(B)-DMG, ECF No. 864 at 1, 4–5, Page ID #:11424, #:11427–11428.)

A reasonable observer would see the Government litigate against the victim where he cannot answer, while declining to meet the fabrication where he can.

The Code of Conduct for United States Judges recognizes that a judge should take appropriate action upon receipt of reliable information indicating the likelihood that a lawyer violated applicable rules of professional conduct. Code of Conduct for U.S. Judges, Canon 3B(6). Where such information was placed before the Court five times over seven months and was never reached (Part II.D, *supra*), that circumstance bears on the reasonable-observer analysis under § 455(a).

The pattern is now complete. The Government recast the fabrication to win the Judgment, recast it again to defend it, would not answer it where the victim could respond, and would not stop invoking the Judgment where he could not. And the only judge who has declined to examine that fabrication is the judge whose Judgment it produced. Section 455(a) exists for precisely this.

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

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

While opinions formed during prior proceedings ordinarily do not supply a basis for disqualification, they do where they reveal "such a high degree of favoritism or antagonism as to make fair judgment impossible." *Liteky*, 510 U.S. at 555. That standard is met on the face of the record.

The same judge who recited, in 2018, the criminal investigation and the Government's agreement that Greenway would be added as a victim, found in 2021, from an order that could do nothing but dismiss, that the victim had failed to identify the very proceeding the judge had recited, and characterized the victim's account

as "speculation pulled from the ether." (Dkt. 13 at 2, Page ID #:210; No. 2:21-cv-01910, Dkt. 10 at 1–2, Page ID #:293–294.)

These facts are of record, and § 455 calls for no affidavit at all.

V. NOTHING IS LEFT FOR JUDGE WRIGHT TO DECIDE

Once disqualification is required, a judge may do no more than perform the "ministerial duties necessary to transfer the case to another judge." *Moody v. Simmons*, 858 F.2d 137, 143 (3d Cir. 1988); *see Liljeberg*, 486 U.S. at 860. Striking or denying this Application or ruling on the Rule 60(d)(3) Motion or on any question under the Local Rules, would not be ministerial. Each should be reserved for the judge to whom the action is reassigned.

Disqualification here is **not** a discretionary call on a close record. It is **required** on multiple independent grounds. Judge Wright is a Respondent to the challenge to his own Judgment, and § 455(b)(5) makes his disqualification **mandatory** and **non-waivable**.

Independent of that ground, 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 faulted the victim for failing to identify it in 2021, from an order it had no jurisdiction to make. And beneath it runs the asymmetry that defines this record: a Government that assumed the fraud rather than deny it, then invoked the Judgment against the victim where he could not answer. Section 455 exists for precisely this. Disqualification ends it.

VI. CONCLUSION

Plaintiff respectfully requests that Judge Wright (1) disqualify himself from this action under 28 U.S.C. §§ 455(a), 455(b)(1), 455(b)(5)(i), and 455(b)(5)(iii); (2) in the alternative, refer this Application to another judge for determination; (3) return this action to the Clerk under General Order No. 26-11, § II.F, for transfer,

by order jointly signed under § II.C, to the judge presiding over the related proceedings, No. 2:26-cv-05207-AB-E and No. 2:26-cv-09383-AB — presently the Honorable André Birotte Jr.; and (4) take no action on the Rule 60(d)(3) Motion, or on any question concerning it, before reassignment.

Nothing in this Application withdraws, modifies, or supersedes Plaintiff's Notices of Related Cases designating *United States v. McCormick*, No. 2:20-CR-00346(B)-DMG (No. 2:26-cv-05207, Dkts. 4, 46), or the relatedness question pending before Chief Judge Dolly M. Gee in that matter (No. 2:20-CR-00346(B)-DMG, Dkts. 861, 862). The transfer requested here is without prejudice to that determination.

DATED: September 30, 2026.

Respectfully submitted,

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

The undersigned, Plaintiff in Pro Se, certifies that the Memorandum of Points and Authorities contains 6,978 words, exclusive of the caption, tables of contents and authorities, signature block, and this certificate, which complies with the word limit of L.R. 11-6.1.

DATED: September 30, 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.

Plaintiff used a generative artificial intelligence tool to assist in drafting portions of this filing. Plaintiff 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 30, 2026.

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