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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
Plaintiff in Pro Se, Individually

**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

**EMERGENCY NOTICE OF MOTION AND MOTION BY PLAINTIFF GUSTAVO ESCAMILLA, INDIVIDUALLY, TO SET ASIDE THE APRIL 4, 2018, JUDGMENT OF DISMISSAL FOR FRAUD ON THE COURT PURSUANT TO FED. R. CIV. P. 60(d)(3); MEMORANDUM OF POINTS AND AUTHORITIES**

Hearing Date: To be set upon reassignment (see Notice Regarding Hearing Date)

Hon. Otis D. Wright, II

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

PLEASE TAKE NOTICE that, at a date and time to be set as stated below, at the United States District Court for the Central District of California, 350 West First Street, Los Angeles, California 90012, Plaintiff Gustavo Escamilla, appearing in his individual capacity and in propria persona, will and hereby does move this Court, on an emergency basis, pursuant to Federal Rule of Civil Procedure 60(d)(3), for an order setting aside the April 4, 2018, Judgment of Dismissal (Dkt. 13) on the ground that it was procured by fraud on the court. This Motion is based on this Notice, the attached Memorandum, the records and files in this action, and such further argument as may be presented.

**NOTICE REGARDING HEARING DATE — MANDATORY DISQUALIFICATION AND REASSIGNMENT**

Plaintiff has not set a hearing date for this Motion and does so for the following reasons. On August 24, 2026, Plaintiff filed his Notice and Application to Disqualify the Honorable Otis D. Wright, II under 28 U.S.C. §§ 144, 455(a), 455(b)(1), and 455(b)(5)(i) in *Escamilla v. United States*, No. 2:26-cv-05207 (C.D. Cal.) (Dkt. 47). Judge Wright thereafter recused himself from that matter (Dkt. 49, Aug. 26, 2026), which now proceeds as No. 2:26-cv-05207-AB-E.

That proceeding is Plaintiff's Crime Victims' Rights Act petition. It rests on the April 4, 2018, Judgment that this Motion asks the Court to set aside, on the April 2, 2021, Order that relied upon it, and on the same fabricated ruling on which both rest — a ruling reported by DHS Special Agent Shawn S. Gibson ("Gibson") after he "consulted with" the United States Attorney's Office for the Western District of Missouri ("USAO-MO"), and republished by the United States Attorney's Office for the Central District of California ("USAO-CDCA"). Judge Wright is also a

named Respondent, in his official capacity, in *Escamilla v. United States*, No. 2:26-cv-09383-AB (C.D. Cal.) (Dkt. 1), which challenges those same orders.

**No** judge may sit in judgment of his own cause. *In re Murchison*, 349 U.S. 133, 136 (1955); *Williams v. Pennsylvania*, 579 U.S. 1, 136 S. Ct. 1899, 1905 (2016). A judge "**shall** disqualify himself in any proceeding in which his impartiality might reasonably be questioned," 28 U.S.C. § 455(a), and "**shall** also disqualify himself" where he "[i]s a party to the proceeding," *id.* § 455(b)(5)(i) — a ground no party may waive, *id.* § 455(e). The grounds that required recusal in No. 2:26-cv-05207 apply with equal force here, where this Motion asks the Court to set aside its own Judgment on the same record.

Plaintiff therefore respectfully requests that this action be returned to the Clerk, consistent with the recusal in No. 2:26-cv-05207 and transferred 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. — before any hearing on this Motion is set.

All three matters arise from the same events, call for determination of the same questions of law and fact — the validity of the April 4, 2018, Judgment and the April 2, 2021, Order, and the fabricated premise on which both rest — and would entail substantial duplication of labor if heard by different judges. *See* C.D. Cal. L.R. 83-1.3.1; C.D. Cal. General Order No. 26-11, §§ II.C, II.J.1.b (June 29, 2026). Judicial economy and the consistent adjudication of a single record favor one judge.

Plaintiff is concurrently filing, in this action, an **Emergency Notice and Application to Disqualify Judge Wright and a Notice of Related Cases**, and, in No. 2:26-cv-09383-AB, a **Notice of Supplemental Facts** placing this Motion before the Honorable André Birotte Jr., which incorporates the same **Notice of Related Cases**.

Plaintiff will notice the hearing no fewer than 28 days in advance, as L.R. 6-1 requires, promptly upon reassignment. Nothing in this Notice waives Plaintiff's right to have this Motion heard and decided, and Plaintiff expressly reserves that right.

Nothing in this Motion 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.

Nothing in this Motion waives, limits, or elects among any claim or remedy available to Plaintiff or to Greenway Nutrients, Inc., including under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671–2680.

**DISQUALIFICATION IS MANDATORY — ANY RULING ON THIS MOTION — INCLUDING UNDER LOCAL RULE 7-3 — BELONGS TO THE JUDGE TO WHOM THE ACTION IS REASSIGNED**

This Motion asks one question: was the April 4, 2018, Judgment procured by fabrication? In five years, no court has answered it. When the Government answered Plaintiff's motion for fraud on the court, it did not deny the fabrication; it argued that it would not matter if it were true. (Dkt. 23 at 5–6, Page ID #:753–754; *see* Dkt. 24 at 4–5, Page ID #:763–764.)

The judge who entered that Judgment has recused himself from the proceeding that rests on it. (No. 2:26-cv-05207, Dkt. 49, Aug. 26, 2026.) He is a named Respondent in the proceeding that challenges it. (No. 2:26-cv-09383-AB, Dkt. 1.) And concurrently with this Motion, and filed before it, Plaintiff has applied in this action, on an emergency basis, for Judge Wright's disqualification under 28 U.S.C. §§ 455(a), 455(b)(1), 455(b)(5)(i), and 455(b)(5)(iii), on grounds that include the same facts presented in his August 24, 2026 application, which preceded

Judge Wright's recusal in No. 2:26-cv-05207. (*See* No. 2:26-cv-05207, Dkts. 47, 49.)

Plaintiff therefore files this Motion without a hearing date and without a pre-filing conference, and respectfully requests that every question it presents, including compliance with Local Rule 7-3, be decided by another judge. "[N]o man can be a judge in his own case." *In re Murchison*, 349 U.S. 133, 136 (1955).

**Five times before this Court, never decided.**

***First — March 29, 2021***. Plaintiffs' counsel filed the documentary proof that no Colorado court had ruled for Selakovic and against Greenway on its civil trademark-infringement claims, together with the Colorado ruling that did address them, in response to the Court's order to show cause in Plaintiff's Crime Victims' Rights Act petition. (No. 2:21-cv-01910, Dkt. 9, Exs. A–C; Dkt. 14-1 ¶ 10, Page ID #:254.)

Four days later, before the USAO-CDCA had appeared or filed any responsive pleading on behalf of the Government, 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.) That motion was referred to another judge and denied. (Dkts. 16, 17.)

*Third — September 18, 2021.* Plaintiffs' counsel moved to set aside this Judgment for fraud on the court. (Dkt. 18.) Two days later, once again 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 repeated, good-faith attempts to meet and confer (Dkt. 24 at 3, Page ID #:762), counsel refiled. (Dkt. 21.) The Government's opposition did not dispute the facts of a single 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 DHS Agent Gibson's fabrication before the Court again. It also showed that the Government's own attorney had not forwarded Plaintiffs' September 21, 2021, meet-and-confer request to her supervisors until October 4. (Dkt. 24 at 3, Page ID #:762.) 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.) The order does not mention the Government's opposition, Plaintiffs' reply, or fraud.

Five filings over seven months. One Sua sponte dismissal. Two strikes under Local Rule 7-3. No ruling on whether this Judgment was procured by fabrication. The Ninth Circuit's 2022 memorandum affirmed on law-of-the-case grounds and did not decide that question either; it described the attorney wrongdoing Plaintiff raised as conduct "that occurred in a different action" — this one. *Escamilla v. United States*, No. 21-55417, 2022 WL 874647, at *1 (9th Cir. Mar. 24, 2022). No court has ever decided it.

Nor has any court examined — and Plaintiff has never waived or forfeited — the jurisdictional defect on which the Court relied to dismiss his March 2021 Crime Victims' Rights Act petition: that this Court had no 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. (No. 2:21-cv-01910, Dkt. 10 at 1, Page ID #:293; No. 2:26-cv-09383-AB, Dkt. 1, at 8–9, 13–14, 16–22.)

**The same pattern in 2026.** The fabrication that procured this Judgment was Special Agent Shawn Gibson's report that a court had ruled for David Dragan Selakovic and against Greenway "in regards to the assertion of the Greenway trademark" — a ruling no court ever made.

On that same fabrication, Plaintiff's federally identified victim status and his right to restitution were foreclosed. In 2026, Plaintiff twice applied to have those rights taken up and decided forthwith, and twice Judge Wright struck the

application. (No. 2:26-cv-05207, Dkt. 35 (striking Dkt. 20); Dkt. 43 (striking Dkt. 40).)

The USAO-CDCA has not answered on the merits in either related proceeding. When Plaintiff applied for Judge Wright's disqualification, Judge Wright recused himself fifty minutes after the application was entered on the docket. (*Id.*, Dkts. 47, 49.) Plaintiff raises this not as a claim under the Crime Victims' Rights Act, which this Motion does not assert, but because it bears on who should decide this Motion.

**A recused judge may act only ministerially.** A judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Once a judge has disqualified himself, "[h]is power is limited to performing ministerial duties necessary to transfer the case to another judge." *Moody v. Simmons*, 858 F.2d 137, 143 (3d Cir. 1988); *see Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 859–60 (1988). Striking this Motion under Local Rule 7-3 would not be a ministerial act. It would be the third time the same judge disposed of the same challenge under the same rule — this time on evidence Plaintiff first obtained in 2026 — and it would guarantee that the question is never decided.

**Statement Regarding Local Rule 7-3.** Plaintiff has not held a pre-filing conference, for the reasons above and in the accompanying Declaration of Gustavo Escamilla Regarding Local Rule 7-3. Local Rule 7-3 asks the parties to "discuss thoroughly … the substance of the contemplated motion and any potential resolution." The rule exists to narrow disputes. Here there is none left to narrow.

The substance of this Motion has been in the Office's hands since September 2021. (Dkt. 24 at 14–15, Page ID #:773–774.)

Its answer is on file. It did not dispute the fabrication and argued only that the fraud, "***assuming arguendo*** that [one] existed," would not "***affect the outcome of the case***." (Dkt. 23 at 5, Page ID #:753.) It did not deny the documented instances of professional misconduct that accompanied the motion. (*Id.* at 5–6,

Page ID #:753–754.) A party that has already assumed the fraud has nothing left to concede at a conference, and nothing to dispute.

Only one resolution would make this Motion unnecessary: for the Office to stop relying on a Judgment procured by DHS Agent Gibson's fabrication. The Office carried that fabrication into this Court under four names in 2018, replaced it with a second false account in 2021, and has never corrected it. (*See* Parts II.E–F, *infra*.) It has chosen the opposite course. In 2026, it invoked this Judgment against Plaintiff again, in its own filing. (No. 2:20-cr-00346(B)-DMG, ECF No. 864 at 4–5, Page ID #:11427–11428.)

The last conference Plaintiffs sought shows what another would accomplish. On September 21, 2021, Plaintiffs' counsel initiated a Local Rule 7-3 conference with the Office and followed up two weeks later. (Dkt. 24 at 3, Page ID #:762.) None of the four attorneys involved, including the one who later said he had emailed, ever telephoned him. (Dkt. 24 at 14, Page ID #:773.)

The Office then asked the Court to deny the motion under Local Rules 7-3 and 11-6, representing that an Assistant United States Attorney had emailed counsel on October 4 and 5, 2021 (Dkt. 23 at 2, Page ID #:750). Counsel declared under penalty of perjury that his office had no record of either email (Dkt. 24 at 14–15, Page ID #:773–774). The Court did not resolve that conflict. It struck the motion by form order for "Failure to comply with Local Rules 7-3 and 11-6." (Dkt. 25, Page ID #:776.)

Nothing changed in 2026. In the related proceedings, the same Office was offered a conference, and was presented in writing with the same fabrication, three more times:

- The on June 19, 2026, when counsel acting on Plaintiff's behalf advised Acting Civil Chief Daniel A. Beck that he remained available to confer;
- on August 16, 2026, by Plaintiff's letter to Mr. Beck setting out Gibson's fabrication and Chief Judge Krieger's contrary ruling;
- and on September 14, 2026, by Plaintiff's letter to Assistant United States Attorney Alarice M. Medrano, Chief, Complex and Defensive Litigation Section.

(No. 2:26-cv-09383-AB, Dkt. 18 at 10, Page ID #:850; Dkt. 19, Ex. A; Dkt. 23, Ex. C; Dkt. 28, § II, at 9–10, Page ID #:1345–1346; *see* No. 2:26-cv-05207, Dkt. 37 at 22, Page ID #:1007.) The Office did not confer and answered none of them. It has never answered the fabrication on its merits. Its silence is not neutral. Each notice it received and left unanswered has continued the deprivation this Motion seeks to end: the denial of due process and equal protection under the Fifth Amendment, of meaningful access to the courts, and of the right to be treated with fairness and with respect for his dignity.

A rule designed to make parties talk has instead been used, by the party still causing the harm, to keep this Court from hearing what it has never denied. A conference requirement that produced no conference in 2021 and was then used to end a fraud-on-the-court motion without a word on the merits, cannot be the reason this Judgment escapes review again. "The law does not require the doing of a futile act." *Ohio v. Roberts*, 448 U.S. 56, 74 (1980), *abrogated on other grounds by Crawford v. Washington*, 541 U.S. 36 (2004); *see Houghton v. Shafer*, 392 U.S. 639, 640–41 (1968) (per curiam) (requiring further administrative appeals "would be to demand a futile act" where the State's Attorney General maintained that the challenged rules "were validly and correctly applied").

Plaintiff does not ask the Court to decide who was right in 2021. He asks that compliance with Local Rule 7-3 be decided by a judge other than the one who decided it then. Concurrently with this filing, Plaintiff is serving the Government

with a written invitation to state its position on this Motion in writing and will supplement this statement upon any response.

The Government has been on written notice of these grounds since 2021, and again from December 2025 through September 2026 (No. 2:26-cv-09383-AB, Dkt. 2, Ex. P; Dkt. 23, Ex. C) and is not prejudiced. *See CarMax Auto Superstores Cal. LLC v. Hernandez*, 94 F. Supp. 3d 1078, 1087–88 (C.D. Cal. 2015) (considering merits despite noncompliance with L.R. 7-3 where the non-moving party suffered no apparent prejudice); *cf.* Fed. R. Civ. P. 83(a)(2).

To the extent the Court finds the conference requirement unmet, Plaintiff respectfully requests that the Court reach the merits. "The inherent power of a federal court to investigate whether a judgment was obtained by fraud is beyond question." *Universal Oil Prods. Co. v. Root Ref. Co.*, 328 U.S. 575, 580 (1946); *see Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991). No conference between the parties can resolve that question.

Request for Leave to Exceed the Word Limit. Plaintiff respectfully requests leave under L.R. 11-6.1 to file the accompanying Memorandum of Points and Authorities, which contains 9,641 words.

The Motion documents six acts of fraud on the court spanning 2016 to 2026, each requiring record citation, and responds to both the Government's October 25, 2021, opposition and its August 5, 2026, filing.

Plaintiff appears in pro se, and the Judgment he challenges has never been examined on its merits. Plaintiff directs this request, like every other question the Motion presents, to the judge to whom the action is reassigned, and respectfully asks that the Motion be heard by a neutral judge who will not again pass over the documented, undenied showing of professional misconduct placed before this Court five times, but will rule on it fairly, on the relevant facts and the material evidence before the Court. (*See* "Five times before this Court, never decided," *supra*.)

Plaintiff is a federally identified crime victim who continues to seek the Government's protection and continues to be deprived of due process. USAO-CDCA officials continue to rely on a Judgment procured by a fabricated court ruling, and this Court reaffirmed that Judgment in 2021, *Sua sponte*, without subject-matter jurisdiction and without examining the fabrication. (No. 2:21-cv-01910, Dkt. 10 at 1–2.)

He has been denied any hearing on it, and it now taints his proceedings in No. 2:26-cv-09383-AB. Plaintiff does not oppose a corresponding enlargement for the Government's response, so the Government suffers no prejudice.

## TABLE OF CONTENTS

**I. INTRODUCTION, CAPACITY, AND THE NATURE OF THE RELIEF SOUGHT** ..... 14

**II. STATEMENT OF FACTS: SIX COORDINATED ACTS OF FRAUD ON THE COURT** ..... 16

A. Act One — The Triggering Act: DHS Agent Gibson Fabricated a Court Ruling That Never Existed (October–November 2016). ..... 16

B. Act Two — The Government's Own Sworn and Signed Filings Confirm the Investigation the Fabrication Was Used to End. ..... 19

C. Act Three — Associate Legal Advisor Ramey's Misleading Declaration of Non-Existence (January 29, 2018). ..... 21

D. Act Four — AUSA Park's Sworn "Prior Knowledge" Fabrication by Identity Substitution (January 29, 2018) ..... 22

E. Act Five — The Coordinated Republication of the Fabrication Under Four Names, Including United States Attorney Hanna (January–February 2018). ..... 24

F. Act Six — Acting United States Attorney Wilkison Mischaracterized Gibson's Stated Reason (July 19, 2021). ..... 25

G. The Fabrication Produced Two Irreconcilable Judicial Orders. ..... 26

**III. THE GOVERNMENT IS TRAPPED BY ITS OWN SWORN WORD — THREE TIMES OVER** ..... 27

**IV. THE FABRICATION VIOLATED PLAINTIFF'S CLEARLY ESTABLISHED DUE-PROCESS RIGHTS** ..... 29

**V. RULE 60(d)(3) AND THE HIGH STANDARD FOR FRAUD ON THE COURT** ..... 31

**VI. THE GOVERNMENT ASSUMED THE FRAUD, KNEW OF IT, WAS TOLD, AND BRUSHED IT ASIDE** ..... 34

VII. THE FRAUD IS ONGOING — THE SAME OFFICE INVOKED THE FRAUDULENTLY PROCURED JUDGMENT AGAINST PLAINTIFF IN 2026 ..... 39

VIII. NO TIME BAR APPLIES ..... 42

IX. THE JURISDICTIONAL DISMISSAL CARRIES NO PRECLUSIVE EFFECT, AND THE GOVERNMENT'S OWN POSITION FORECLOSES ITS RES JUDICATA DEFENSE ..... 43

X. CONCLUSION ..... 44

# TABLE OF AUTHORITIES

**Cases**

*Allen v. McCurry*, 449 U.S. 90 (1980) ..... 43
*Berger v. United States*, 295 U.S. 78 (1935) ..... 34
*Costanich v. Dep't of Soc. & Health Servs.*, 627 F.3d 1101 (9th Cir. 2010) ..... 14, 30
*Costello v. United States*, 365 U.S. 265 (1961) ..... 40, 43
*Davis v. Wakelee*, 156 U.S. 680 (1895) ..... 28
*Devereaux v. Abbey*, 263 F.3d 1070 (9th Cir. 2001) (en banc) ..... 14, 30
*Escamilla v. United States*, No. 21-55417, 2022 WL 874647 (9th Cir. Mar. 24, 2022) ..... 41
*Greenway Nutrients, Inc. v. Blackburn*, No. 1:13-cv-01088 (D. Colo.) ..... 18
*Greenway Nutrients, Inc. v. Pierce*, No. 2:22-cv-03322 (C.D. Cal.) ..... 23
*Greenway Nutrients, Inc. v. Selakovic*, No. 9:18-cv-81104 (S.D. Fla.) ..... 23, 24, 32, 36
*Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778 (9th Cir. 2001) ..... 28
*Hardwick v. County of Orange*, 844 F.3d 1112 (9th Cir. 2017) ..... 31
*Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944) ..... 31, 41, 42
*In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078 (9th Cir. 2007) ..... 31
*Islamic Shura Council of S. Cal. v. FBI*, 779 F. Supp. 2d 1114 (C.D. Cal. 2011) ..... 34
*Johnson v. Bell*, 605 F.3d 333 (6th Cir. 2010) ..... 32, 37
*Kremer v. Chem. Constr. Corp.*, 456 U.S. 461 (1982) ..... 43
*Lanuza v. Love*, 899 F.3d 1019 (9th Cir. 2018) ..... 14, 21, 30, 35, 42, 43
*New Hampshire v. Maine*, 532 U.S. 742 (2001) ..... 28, 43
*Nurse v. United States*, 226 F.3d 996 (9th Cir. 2000) ..... 31
*Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128 (9th Cir. 1995) ..... 31, 32
*Spencer v. Peters*, 857 F.3d 789 (9th Cir. 2017) ..... 30
*Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83 (1998) ..... 40, 43
*United States v. $442,992.97 in U.S. Currency, et al.*, No. 15-0079-CV-W-DGK (W.D. Mo.) ..... 15, 20, 28
*United States v. Estate of Stonehill*, 660 F.3d 415 (9th Cir. 2011) ..... 16, 31, 32, 42
*United States v. McCormick*, No. 2:20-CR-00346(B)-DMG (C.D. Cal.) 16, 38, 39, 40, 41, 43, 45
*United States v. Sierra Pacific Indus., Inc.*, 862 F.3d 1157 (9th Cir. 2017) ..... 26, 31

**Statutes**

18 U.S.C. § 241 ..... 29
18 U.S.C. § 242 ..... 29, 30
18 U.S.C. § 1519 ..... 29
28 U.S.C. § 530B ..... 24, 25, 34
28 U.S.C. § 1654 ..... 14
42 U.S.C. § 1983 ..... 33, 35

**Rules**

Fed. R. Civ. P. 41(b) ..... 40, 43
Fed. R. Civ. P. 60(c)(1) ..... 42
Fed. R. Civ. P. 60(d)(3) ..... 14, 16, 31, 42, 44

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION, CAPACITY, AND THE NATURE OF THE RELIEF SOUGHT

Plaintiff Gustavo Escamilla appears solely in his individual capacity, in propria persona, pursuant to 28 U.S.C. § 1654, asserting only his own direct and personal injuries. He does not appear on behalf of, and does not purport to represent, Greenway Nutrients, Inc., a separate legal person that may appear only through licensed counsel.

Plaintiff asserts no independent cause of action under the Crime Victims' Rights Act, and this Motion seeks none. The constitutional injury at issue is the ongoing deprivation of due process facilitated through the deliberate fabrication of a federal court ruling by an official of the United States Department of Homeland Security (DHS), Homeland Security Investigations (HSI), Immigration and Customs Enforcement (ICE) — a violation the Ninth Circuit has squarely recognized. *Devereaux v. Abbey*, 263 F.3d 1070, 1074–75 (9th Cir. 2001) (en banc) (deliberate fabrication of evidence by government officials violates due process); *Costanich v. Dep't of Soc. & Health Servs.*, 627 F.3d 1101, 1108, 1111 (9th Cir. 2010) (same, in civil proceedings); *Lanuza v. Love*, 899 F.3d 1019, 1028 (9th Cir. 2018) (immigration official "forged and submitted evidence in a deportation proceeding to deprive an individual of his right to relief"). (*See* Part IV, *infra*.)

The Crime Victims' Rights Act is relevant only to identify the status and rights of which that fabrication deprived Plaintiff, a Mexican-American grandfather with no formal legal education or training, and the mandatory duties the Government breached. The relief sought here is both proper and narrow: that this Court, exercising its inherent power under Federal Rule of Civil Procedure 60(d)(3), set aside a judgment procured by fraud.

The court record in question clearly establishes, and the Government has never denied, that the April 4, 2018 Judgment was procured by DHS/ICE Special Agent Shawn Gibson's ("Gibson") deliberate fabrication of a court ruling against Plaintiff's company, Greenway, and in favor of the alleged criminal mastermind, David Dragan Selakovic ("Selakovic"), regarding Greenway's meritorious civil trademark-infringement claims — a ruling that Gibson, officials of the United States Attorney's Office for the Central District of California (USAO-CDCA), and officials of the United States Attorney's Office for the Western District of Missouri (USAO-MO), knew, or had the means to know, no court ever made.

This Motion is timely and fresh for two independent reasons, each arising within the past year.

***First,*** Plaintiff obtained in 2026 a sworn federal forfeiture complaint — signed by Assistant United States Attorney James Curt Bohling of the USAO-MO and verified under penalty of perjury by DHS-ICE Supervisory Special Agent Shawn S. Gibson (No. 15-0079-CV-W-DGK (W.D. Mo.)) — in which the Government's own officers attested that the Software Slashers investigation the fabrication was deployed to suspend it was real.

He first placed it before a federal court on September 10, 2026. (No. 2:26-cv-09383-AB, Dkts. 18, 19, Ex. C.) And Plaintiff expressly advised USAO-CDCA Victim Witness Coordinator Allison Stafford, in his written correspondence of December 2025 through February 2026 (Petition, filed May 14, 2026, No. 2:26-cv-05207 (Dkt. 9), Exs. P–U), of the Government's "mandatory obligations to disclose sealed case information" — information the Government has never disclosed — and of its ongoing due-process violations, which bear directly on Plaintiff's victim status and his right to restitution. (Feb. 5, 2026, email to A. Stafford, No. 2:26-cv-05207, Dkt. 9, Exs. P–U; No. 2:26-cv-09383-AB, Dkt. 1 at 25, Page ID #:25.) The Government neither disclosed nor cured.

***Second,*** on August 5, 2026, the same Office rested on the Judgment the fabrication procured to brand Plaintiff's claims, in a live federal proceeding, "ill-fated" and as "broad allegations of government misconduct that courts have repeatedly rejected" (No. 2:20-CR-00346(B)-DMG, ECF No. 864 at 4–5, Page ID #:11427–11428) — representations that were themselves false, material, misleading, and untrue. The fraud is neither stale nor closed. The Government continues to rely on DHS Agent Gibson's fabrication to defend the Judgment it procured. That fabrication is compounded by multiple instances of documented, undenied, and unaddressed allegations of professional misconduct, which have tainted Plaintiff's proceedings. Rule 60(d)(3) places no time limit on this Court's power to set aside such a judgment. *See Estate of Stonehill*, 660 F.3d at 443..

## II. STATEMENT OF FACTS: SIX COORDINATED ACTS OF FRAUD ON THE COURT

The record shows that this fraud was neither inadvertent nor a single misstatement. It was a coordinated sequence of acts, from 2016 to the present, each documented of record.

### A. Act One — The Triggering Act: DHS Agent Gibson Fabricated a Court Ruling That Never Existed (October–November 2016).

Every violation in this record descends from a single sentence a federal agent wrote about a ruling on the Greenway trademark that no court ever made. On October 28, 2016, DHS Special Agent Shawn Gibson the agent who had identified Greenway as the Lead Victim of Operation Software Slashers — wrote to Plaintiff from his official government account:

> **Agent Gibson (Oct. 28, 2016) (No. 2:26-cv-05207, Dkt. 9, Ex. I):**
>
> "We have researched your claims and consulted with the United States Attorney's Office, Western District of Missouri and while we sympathize with your situation, we 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. . . . Regardless, we continue to investigate the alleged criminal activities in regard to his alleged distribution of counterfeit software."

The sentence carries its own refutation. Gibson reported that a court had ruled against Greenway on the civil trademark-infringement claims — and, in the same breath, that the government would "continue to investigate" the very conduct.

The only thing entered on August 17, 2015, was the Clerk's docket entry of judgment on the dismissal of Greenway's action *without prejudice*, for failure to prosecute and to obtain counsel. (Dkt. 9-2, Ex. 3, at 25, Page ID #:172 (D. Colo. DE-147, DE-148).)

It was not a ruling on the merits of **anything**. No court ever ruled in favor of Selakovic "in regards to the assertion of the Greenway trademark," and the without-prejudice dismissal decided nothing that could bear on Plaintiff's victim status, rights, or restitution.

The only ruling on the trademark question went the other way. Selakovic had moved to dismiss, arguing Greenway's civil trademark claim did not belong in Colorado. That is the whole of Selakovic's defense, and on March 31, 2015, Chief Judge Marcia S. Krieger took up that argument and flatly rejected it:

> **Chief Judge Krieger (Mar. 31, 2015) (No. 2:26-cv-05207, Dkt. 9, Ex. D):**
>
> "Mr. Selakovic argues that under the Calder effects test, Greenway has not alleged that he 'expressly aimed' any tortious activity at Colorado.

> The Court disagrees. Trademark infringement turns on whether customers are likely to be confused, mistaken, or deceived by the use of a trademarked product.... Accordingly, the Court agrees with the Magistrate Judge that at this early stage of litigation, Greenway has met its burden of making a prima facie showing of personal jurisdiction over Defendants Blackburn, FSS, and Selakovic. . . . The motion is DENIED in all other respects." — *Greenway Nutrients, Inc. v. Blackburn*, No. 1:13-cv-01088-MSK-KMT, DE-129, at 10–11 (D. Colo. Mar. 31, 2015) (Krieger, C.J.).

That ruling rejected Selakovic's challenge to Greenway's civil trademark-infringement claims and left them standing. After the case was dismissed without prejudice, Chief Judge Krieger confirmed that those claims "were not adjudicated on the merits" and "were still viable." (Dkt. 9-2, Ex. 3, at 26, Page ID #:173 (DE-155, June 13, 2016).) There was ***no*** ruling in ***favor*** of Selakovic and ***against*** Greenway, as it specifically relates to Greenway's meritorious civil trademark-infringement claims against Selakovic personally.

Set Gibson's sentence against that record and the fabrication has nowhere to stand. Gibson told the victim a court "found in favor of Selakovic against Greenway Nutrients in regards to the assertion of the Greenway trademark." The court had found the opposite — "The Court disagrees" — and denied Selakovic's motion. *He did not misread the docket. He inverted it.*

Plaintiff told him so that same day, advising Gibson that no such ruling in Selakovic's favor existed, and that Gibson was either mistaken or taking advantage of a Mexican-American small businessman appearing without counsel. Gibson did not correct the record. He hardened it. On November 21, 2016, he made the fabrication operative:

> **Agent Gibson (Nov. 21, 2016) (No. 2:26-cv-05207, Dkt. 9, Ex. I):**
>
> "[O]ur agency cannot move forward with any investigation involving your trademark until you resolved this issue with the District Court in Colorado that issued the decision. . . . [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."

Three weeks earlier, Gibson had written that the government would "continue to investigate."

Now the same agent wrote that it "cannot move forward" — on the strength of a "court decision" on the trademark that no court had made, and that, on the trademark question he named, had been decided against Selakovic. There was no issue to resolve and no decision to resolve it against. On that fabrication, Gibson suspended the federal criminal investigation in which Plaintiff's company, Greenway, was the identified Lead Victim, foreclosed any restitution determination, and severed Plaintiff from the prosecution. Every act that follows is built on the sentence Gibson wrote on October 28, 2016.

*Due-process impact:* The fabricated ruling was the sole predicate on which the Government suspended the criminal investigation, withheld its sealed case information, and foreclosed Plaintiff's federally identified victim status and the relief it carried — at the source, before any court could hear him.

**B. Act Two — The Government's Own Sworn and Signed Filings Confirm the Investigation the Fabrication Was Used to End.**

The investigation Gibson's fabrication suspended as to Greenway was real, and the Government has said so under oath and in its own voice.

On January 30, 2015 — about a month before he met with Plaintiff — Gibson verified under penalty of perjury a civil forfeiture complaint, signed by Assistant United States Attorney James Curt Bohling of the USAO-MO, describing the

Homeland Security Investigations "Software Slashers" counterfeit-software investigation and the seizure of the conspirators' accounts, vehicles, and precious metals. (*United States v. $442,992.97 in U.S. Currency, et al.*, No. 15-0079-CV-W-DGK (W.D. Mo.), Dkt. 1 ¶ 54, at 71–72; *see* No. 2:26-cv-09383-AB, Dkts. 18, 19, Ex. C.)

The Department of Justice later announced that investigators had "seized more than $20.6 million in assets … through federal forfeitures." (Press Release, U.S. Dep't of Justice, Office of Public Affairs, *Operation Software Slashers: Six Defendants Plead Guilty to $100 Million Software Piracy Scheme* (Dec. 17, 2015).)

The Office then told this Court, in its own motion, that at the March 3, 2015, meeting "Gibson explained that ICE and USAO-MO had been investigating the Greenway investor defendants in the Colorado action for criminal trademark infringement," and had already recovered more than $20 million. (Dkt. 9 at 10, Page ID #:131.) This Court recited the same facts, citing that motion. (Dkt. 13 at 2, Page ID #:210.)

**The Government's own filings, against its own fabrication:**

**Under oath** (Jan. 30, 2015): Gibson verified the investigation and the seizures.

**In the Office's own motion** (Jan. 29, 2018): the investigation reached the Greenway investor defendants and had recovered more than $20 million.

**By fabrication** (Oct. 28, 2016): the investigation could not proceed as to Greenway because of a trademark ruling no court ever made.

**The investigation was real. The ruling used to suspend it was not.**

*Due-process impact:* The only thing that ever stood between Plaintiff and that criminal investigation was a fabricated court ruling: evidence manufactured by a federal agent, during an active criminal investigation, in direct contradiction of the public court record. That is the conduct the Ninth Circuit has held unlawful

when an official "forged and submitted evidence . . . to deprive an individual of his right to relief." *Lanuza*, 899 F.3d at 1028.

**C. Act Three — Associate Legal Advisor Ramey's Misleading Declaration of Non-Existence (January 29, 2018).**

The next material misrepresentation entered this Court under oath. Attached to the Government's January 29, 2018, motion to dismiss was a sworn declaration by Robert A. Ramey, Associate Legal Advisor for U.S. Immigration and Customs Enforcement (*see* Dkt. 15 at 3–4, Page ID #:321–322), stating under penalty of perjury:

> **Associate Legal Advisor Robert A. Ramey (Jan. 29, 2018) (Ramey Decl. ¶¶ 2–3, Dkt. 9-1, Page ID #:146–147):**
>
> "[These queries] identified no electronic or hardcopy record of any administrative tort claim from either Mr. Escamilla or Greenway Nutrients transmitted to ICE."

That declaration was material and misleading. On May 1, 2017, Plaintiff had filed a formal civil-rights complaint with DHS's Office for Civil Rights and Civil Liberties (DHS-CRCL), which acknowledged receipt the next day; Plaintiff had also sent the complaint to more than twenty DHS and DOJ officials. (Dkt. 14-1 ¶¶ 19–22, 25, Page ID #:256–259.)

Ramey did not query DHS-CRCL. He limited his queries to ICE's administrative tort-claim database and the Division's own attorneys and paralegals — where a civil-rights complaint filed with DHS-CRCL would not appear. (*Id.* ¶ 24, Page ID #:259.) The same Office's July 19, 2021, opposition later acknowledged that "undersigned counsel referenced the existence of plaintiff's complaint to CRCL in defendants' reply" — directly contradicting Ramey's sworn declaration of non-existence. (No. 2:17-cv-07748, Dkt. 15 at 4, Page ID #:322.)

*Due-process impact:* This Court relied on Ramey's declaration to find that it lacked jurisdiction over the tort claims. (Dkt. 13 at 11, Page ID #:219.) A materially misleading sworn declaration, submitted by officers of the court to procure dismissal and deprive Plaintiff of due process, is a paradigm fraud on the court.

**D. Act Four — AUSA Park's Sworn "Prior Knowledge" Fabrication by Identity Substitution (January 29, 2018).**

Also on January 29, 2018, AUSA Grace Y. Park submitted a sworn declaration attaching, as Exhibit 4, a June 28, 2013, motion for sanctions and protective order filed by Defendants on behalf of Thomas F. Ryan ("Tom Ryan") and his ex-wife Wendy Ryan, in the Colorado action, concerning Plaintiff's communications with Tom and Wendy Ryan, and their daughter, Jessica Campbell (née Ryan). (Park Decl. ¶ 5, Ex. 4, Dkt. 9-2, Page ID #:149, #:174–191; *see* No. 2:26-cv-05207, Dkt. 9, Ex. E.)

Relying on that misleading exhibit, the motion to dismiss filed over Park's signature told the Court that Plaintiff's evidence regarding Greenway's former attorney, Michael J. Ryan, "***is actually rather old***," because ***"[a]s far back as June 11, 2013, Escamilla sent threatening and profanity-laced communications to Ryan, his ex-wife, and daughter.***" (Dkt. 9 at 18 n.11, Page ID #:139; *see id.* at 22–23, Page ID #:143–144.) The Court adopted that premise, finding that Plaintiffs "had knowledge of their 'new information' regarding Greenway's attorney as early as June 2013." (Dkt. 13 at 16 n.6, Page ID #:224.)

It was a documented identity substitution. Plaintiff's June 2013 emails were sent to Thomas F. Ryan, his ex-wife Wendy Ryan, and their daughter — entirely different persons from Michael J. Ryan, Greenway's former fiduciary attorney. As Plaintiff has attested under oath, Park's attached motion never once mentions Michael J. Ryan. (Dkt. 14-1 ¶ 31, Page ID #:261.) And the substitution was not merely false but impossible.

In 2013, Plaintiff knew only that Greenway's former raw-product supplier, Ecowin, had cut Greenway off — the breach he sued over in Colorado. He did not know the extent of what had been done, and he had no knowledge of Michael J. Ryan's direct involvement in the scheme to defraud Greenway. (*Greenway Nutrients, Inc. v. Pierce*, No. 2:22-cv-03322 (C.D. Cal.), Dkt. 1-1 ¶ 91; *Greenway Nutrients, Inc. v. Selakovic*, No. 9:18-cv-81104 (S.D. Fla.), Dkt. 1 ¶¶ 74–77, 84, 100.)

The facts tying Selakovic, the Ecowin distribution rights, and HPC Acquisitions, Inc. (later Vegalab, Inc.) together first appeared on the public record on **March 29, 2016**, when HPC's annual report disclosed Selakovic's acquisition of control and attached a distribution agreement, dated October 19, 2012, that displaced Greenway's own Ecowin contract — a contract Michael J. Ryan had drafted. (No. 9:18-cv-81104, Dkt. 1 ¶¶ 70, 80–84, 112; Vegalab, Inc., Form 10-K for fiscal year 2017, at 2, 4 (SEC File No. 0-53248).)

Plaintiff discovered Michael J. Ryan's role in March 2017 and reported it to DHS Agent Gibson on April 11, 2017 (Dkt. 13 at 4, Page ID #:212). When Gibson did not respond, Plaintiff reported it to DHS-CRCL and to more than twenty DHS and DOJ officials. (Dkt. 14-1 ¶¶ 19–22, 25, Page ID #:256–259.)

He learned of James D. Ryan's role in the scheme to defraud his former client only in June and July 2017, when James Ryan, Greenway's own former attorney, appeared for Selakovic's companies against Greenway, in flagrant breach of his fiduciary duty to keep Greenway's information confidential and of the non-disclosure agreement his firm had made with Greenway. (No. 9:18-cv-81104, Dkt. 1 ¶¶ 110–111, 151–160; *id.*, Dkt. 81 (sustaining fiduciary-duty claims against the Ryan defendants); No. 2:22-cv-03322, Dkt. 1-1 ¶¶ 32, 101, 109–112.)

Nothing in June 2013 could have disclosed either. A representation, built on a sworn exhibit that never mentions Michael J. Ryan, that conflates two different

men to charge a victim with facts he did not discover until March 2017 is a fabrication.

*Due-process impact:* Advancing a materially false representation, built on a sworn exhibit, deprived Plaintiff of an adjudication on the true record, in breach of the candor that 28 U.S.C. § 530B makes mandatory.

**E. Act Five — The Coordinated Republication of the Fabrication Under Four Names, Including United States Attorney Hanna (January–February 2018).**

The January 29, 2018, motion to dismiss — filed over the names of United States Attorney Nicola T. Hanna, AUSA Grace Y. Park, and two others (Dkt. 9 at 1, 7, 24, Page ID #:122, #:128, #:145) — took the ownership rationale that DHS Office of Professional Responsibility agent Russell Simons had given Plaintiff after conferring with Gibson (*see* Part IV, *infra*), which Plaintiffs had disputed, and presented it to this Court as agency policy. It represented that the Colorado dismissal without prejudice "leaves plaintiffs' valid ownership of Greenway's trademarks in doubt"; that ICE and USAO-MO, "in their discretion, made the reasoned decision that they would not resume their investigation"; and that "Greenway determined that it could not prevail against the Greenway investors" under the civil standard. (No. 2:17-cv-07748, Dkt. 9 at 11, 19, 22, Page ID #:132, #:140, #:143.) Greenway determined no such thing. Its action was dismissed for failure to prosecute and obtain counsel. (Dkt. 9-2, Ex. 3, at 25, Page ID #:172.)

Nor was Greenway's ownership ever in doubt. Its registered U.S. trademark (Reg. No. 4,007,591, issued Aug. 2, 2011) has never been in doubt (No. 9:18-cv-81104, Dkt. 1 ¶ 41), and no court ever ruled on it in Selakovic's favor.

The Colorado docket the Office itself filed, as Exhibit 3 to Park's declaration, showed Chief Judge Krieger's March 31, 2015, ruling denying Selakovic's motion

(DE-129) and her June 13, 2016, order confirming that Greenway's trademark claims "were not adjudicated on the merits" and "were still viable" (DE-155). (Dkt. 9-2, Ex. 3, at 24, 26, Page ID #:171, #:173.)

The Complaint the Office was answering attached Gibson's June and August 2015 emails confirming that the investigation was continuing. (Dkt. 13 at 3, Page ID #:211 (citing Compl. Exs. 5–6).) The attorneys had the means to verify that Greenway's trademark ownership was never in doubt — and represented otherwise anyway.

A single attorney's misstatement may be error; a representation made over the names of four USAO-CDCA attorneys, led by the United States Attorney himself, with the contradicting record in the Office's own exhibit, is not.

*Due-process impact:* Officers bound by the duty of candor that 28 U.S.C. § 530B makes mandatory republished a fabrication to persuade the Court the investigation was suspended, depriving Plaintiff of the fair adjudication due process guarantees.

**F. Act Six — Acting United States Attorney Wilkison Mischaracterized Gibson's Stated Reason (July 19, 2021).**

On July 19, 2021 — after this Court dismissed Plaintiff's March 2021 CVRA petition — Acting United States Attorney Wilkison, AUSA Park, and two others opposed Plaintiff's disqualification motion. Defending this Court's dismissal of that petition for Plaintiffs' "failure to identify the existence of criminal proceedings affecting them as victims" (Dkt. 15 at 2, Page ID #:320), the Office told this Court, in its own voice, why the dismissal was correct:

> **The USAO-CDCA (Dkt. 15, July 19, 2021):**
>
> "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." (No. 2:17-cv-07748, Dkt. 15 at 3, Page ID #:321 (citations omitted).)

That is not what Gibson said. He gave one reason: a court had "**found in favor of Selakovic against Greenway Nutrients in regards to the assertion of the Greenway trademark**," so his agency was "bound by decision of the court" and "cannot move forward." (No. 2:26-cv-05207, Dkt. 9, Ex. I.)

Gibson said nothing about a judgment on the merits, and nothing about trademark ownership. Ownership surfaced only after Simons conferred with Gibson in August 2017 (Part IV, *infra*); the Office adopted it in 2018 ("valid ownership . . . in doubt") and added "did not reach a judgment on the merits" in 2021, moving Gibson's notice back to "August 2015," when his June and August 2015 emails confirmed the investigation was continuing. One fabricated reason, recast three times, differently each time. None is true.

*Due-process impact:* Rather than correct the fabrication, the Office mischaracterized it and made the mischaracterization its stated legal ground — misrepresentation that "involves, or is suborned by, an officer of the court." *United States v. Sierra Pacific Indus., Inc.*, 862 F.3d 1157, 1168 (9th Cir. 2017) (internal quotation marks omitted).

### G. The Fabrication Produced Two Irreconcilable Judicial Orders.

On the one question on which a Crime Victims' Rights Act claim turns — whether the underlying criminal proceeding exists — this Court's two orders cannot stand together:

**The two orders, side by side:**

**April 4, 2018 Order** (Dkt. 13 at 2, Page ID #:210) — recited, citing the Government's own motion ("Mot. 3"), 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; and that Plaintiffs "may be able to recover from an established victims' fund." It also recited 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.

## III. THE GOVERNMENT IS TRAPPED BY ITS OWN SWORN WORD — THREE TIMES OVER

To deny the fabrication now, the Government must contradict itself — its own winning argument, its own adopted orders, and, most remarkably, its own agent's sworn word. It is trapped three times over.

***First***, the Government won on the premise it must now disown. To secure dismissal of the 2017 action, it 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." (Dkt. 9 at 22, Page ID #:143.) That representation bought the Government a judgment. It also fixed it with an admission it cannot escape: one cannot make a discretionary decision whether to "resume" a DHS criminal investigation that never began.

Judicial estoppel bars precisely this maneuver. "[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (quoting *Davis v. Wakelee*, 156 U.S. 680, 689 (1895)). The Ninth Circuit applies the bar where, as here, "the court relied on, or 'accepted,' the party's previous inconsistent position." *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 783 (9th Cir. 2001). The Government kept its judgment; it cannot now disown the premise that produced it.

***Second***, the Government's own words became this District's findings. The investigation and the recovery of more than $20 million the Government described in its own motion (Dkt. 9 at 10, Page ID #:131) became this Court's recitals, citing that motion. (Dkt. 13 at 2, Page ID #:210; *see* Part II.G, *supra*.) Those are the Government's representations, judicially adopted — not allegations the Court merely repeated back. A litigant is bound by the narrative it presents in its own brief; it does not become false because it later grows inconvenient.

***Third***, the Government swore to the investigation. 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), was signed by Assistant United States Attorney James Curt Bohling of the USAO-MO and verified under penalty of perjury by DHS-ICE Supervisory Special Agent Shawn S. Gibson himself. It describes the Software Slashers investigation and catalogs the seized accounts, vehicles, and precious metals. (*Id.*, Dkt. 1 ¶ 54, at 71–72.)

The same Supervisory Special Agent Gibson who verified, under penalty of perjury, that the investigation was real then reported a trademark ruling for

Selakovic that no court ever made, and deployed it to suspend that investigation as to Greenway, and with it the victim's status and the established victims' fund of which he had told Plaintiff. (Dkt. 13 at 2–3, Page ID #:210–211.) The Government has never corrected the one or disowned the other.

The threshold fact of this case — that the criminal investigation existed — is no longer contestable, not because Plaintiff asserts it, but because the Government itself swore to it.

## IV. THE FABRICATION VIOLATED PLAINTIFF'S CLEARLY ESTABLISHED DUE-PROCESS RIGHTS

The fabrication did not stay with Gibson. In August 2017, Plaintiff took it to Russell Simons, Resident Agent in Charge of the DHS Office of Professional Responsibility. After speaking with Gibson, Simons told Plaintiff he must return to federal civil court for a favorable decision in the Colorado action, because "the standing decision left the validity of Plaintiffs' trademark ownership at issue." (Dkt. 13 at 4, Page ID #:212.) Gibson's stated reason had been a ruling for Selakovic. After the two men conferred, it became trademark ownership, the premise the Office carried into this Court five months later. (*See* Part II.E, *supra*.)

Plaintiff's June 2025 complaint to the DHS Office of Inspector General records the rest. Simons said he knew Gibson personally and that Gibson had told him everything he needed to hear. Simons closed the complaint without reviewing Plaintiff's evidence, conceded that neither he nor Gibson could find any record of the purported August 17, 2015 ruling, shifted to ownership, and told Plaintiff: "You can file anything you want to because I am not going to do anything with any of it anyway!" (No. 2:26-cv-09383-AB, Dkt. 19, Ex. B.) That complaint named 18 U.S.C. §§ 241, 242, and 1519; Plaintiff cites it for what was reported, and when, not for adjudication of those offenses.

This conduct violates clearly established law. Deliberate fabrication of evidence by government officials violates due process. *Devereaux v. Abbey*, 263 F.3d 1070, 1074–75 (9th Cir. 2001) (en banc). The rule has applied in civil proceedings since 2010: "an interviewer who deliberately mischaracterizes witness statements in her investigative report . . . commits a constitutional violation." *Costanich v. Dep't of Soc. & Health Servs.*, 627 F.3d 1101, 1111 (9th Cir. 2010); *see id.* at 1108. Where there is direct evidence of fabrication (here, a court ruling no court made), the plaintiff need not prove the official's knowledge of innocence. *Spencer v. Peters*, 857 F.3d 789, 799–800 (9th Cir. 2017).

In *Lanuza v. Love*, a federal immigration official "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 principle applies *a fortiori* here, where the forged document was a purported court ruling, a graver assault on judicial integrity than the forged agency form in *Lanuza*. The conduct there was treated as the crime it was: Love was prosecuted and pleaded guilty to deprivation of rights under color of law, 18 U.S.C. § 242, though the government "did not take any action against Love until after this lawsuit was filed" by his victim. *Id.* at 1022. The government's own prosecutor described the injury: a "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).

As the Ninth Circuit summarized it, "[a]t its core, this case is about a lie, and all the ways it was used, over several years, to defraud the courts," and "[f]ailing to provide a narrow remedy for such an egregious constitutional violation would tempt others to do the same." *Id.* at 1034. So too here: the lie at the center of this case has been used, over nine years, to defraud this Court and to deprive a crime victim of the rights and relief the Government itself acknowledged.

Nor can the Government's recurring defense, that the fraud would not "affect the outcome of the case" (Dkt. 23 at 5, Page ID #:753), survive. "[G]overnment perjury and the knowing use of false evidence are absolutely and obviously irreconcilable with the Fourteenth Amendment's guarantee of Due Process in our courts." *Hardwick v. County of Orange*, 844 F.3d 1112, 1119 (9th Cir. 2017). And where fraud on the court is shown, the Supreme Court declines to weigh its effect: the wrongdoers "thought the [fabrication] material," and "are in no position now to dispute its effectiveness." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 247 (1944), *overruled on other grounds by Standard Oil Co. of Cal. v. United States*, 429 U.S. 17 (1976). Nor was it discretion: "governmental conduct cannot be discretionary if it violates a legal mandate." *Nurse v. United States*, 226 F.3d 996, 1002 (9th Cir. 2000).

## V. RULE 60(d)(3) AND THE HIGH STANDARD FOR FRAUD ON THE COURT

Rule 60(d)(3) motions are subject to a "high standard." *Sierra Pacific*, 862 F.3d at 1171. The movant must establish fraud by clear and convincing evidence. *United States v. Estate of Stonehill*, 660 F.3d 415, 443 (9th Cir. 2011). "[T]he relevant inquiry is not whether fraudulent conduct 'prejudiced the opposing party,' but whether it 'harmed the integrity of the judicial process.'" *Sierra Pacific*, 862 F.3d at 1168 (quoting *Estate of Stonehill*, 660 F.3d at 444).

The fraud must be an "intentional, material misrepresentation," *id.* (quoting *In re Napster, Inc. Copyright Litig.*, 479 F.3d 1078, 1097 (9th Cir. 2007), *abrogated on other grounds by Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100 (2009)), and "must involve an unconscionable plan or scheme which is designed to improperly influence the court in its decision," *id.* (quoting *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128, 1131 (9th Cir. 1995)).

The misrepresentations must go "to the central issue in the case," *id.* (quoting *Estate of Stonehill*, 660 F.3d at 452), and perjury qualifies if it "involves, or is suborned by, an officer of the court," *id.* (internal quotation marks omitted). Fraud on the court also includes "a concealment when one is under a duty to disclose." *Johnson v. Bell*, 605 F.3d 333, 339 (6th Cir. 2010) (quoting *Carter v. Anderson Motor Co.*, 585 F.3d 1007, 1011 (6th Cir. 2009)).

Every element is met by direct documentary evidence, and the Court need not find any single act sufficient alone. Fraud on the court may also be found by assessing various acts of misconduct that, when taken together over the entire course of litigation, rise to the level of a fraud on the court. *See Estate of Stonehill*, 660 F.3d at 446–52 (analyzing whether the allegations, taken as a whole, amounted to fraud on the court); *see also Pumphrey*, 62 F.3d at 1133 (series of steps that, taken together, constituted fraud on the court).

Viewed whole, the six acts reflect "an effort by the government to prevent the judicial process from functioning 'in the usual manner,'" through false statements and nondisclosure "so fundamental that it undermined the workings of the adversary process itself." *Stonehill*, 660 F.3d at 445.

The Government has already answered this Motion once, and its answer concedes the point. In October 2021, it argued that the factual narrative "formed no basis of the Court's dismissal," and that the fraud, "assuming arguendo that [one] existed, . . . would not 'affect the outcome of the case.'" (Dkt. 23 at 5–6, Page ID #:753–754.)

It did not deny the fabricated ruling, the Ramey declaration, the "ownership in doubt" representation, or Park's substitution of Thomas F. Ryan for Michael J. Ryan, though it recited that last allegation itself. (*Id.* at 6, Page ID #:754.) The lead that substitution buried later survived dismissal in the Southern District of Florida: Greenway's claims against the Ryan brothers and Vegalab, Inc. survived (No. 9:18-cv-81104, Dkt. 81), and Greenway documented diverted Ecowin product with a

retail value exceeding $100 million, for which it was never compensated (*id.*, Dkt. 102 at 65).

The Government's only declaration, AUSA Finn's, concerned the meet-and-confer dispute. (*See* Dkt. 23 at 1–2, Page ID #:749–750; Dkt. 24 at 2–4, Page ID #:761–763.) And its own summary of the Judgment names the holdings the fabrications produced: dismissal of the FTCA claim for failure to exhaust, and the discretionary-function bar "even if they had exhausted." (Dkt. 23 at 3, Page ID #:751.)

The Court applied the discretionary-function exception on the express premise of the fabricated ruling: Defendants "chose not to further investigate Plaintiffs' claims due to the negative judgment in the Colorado action," and DHS declined to commit its resources "to a criminal investigation in which a civil court had already ruled against the victims." (Dkt. 13 at 13, Page ID #:221.)

The exhaustion holding rested on Ramey's declaration. (*Id.* at 11, Page ID #:219.) The alternative Rule 12(b)(6) rulings rested on Park's declaration (*id.* at 16 n.6, Page ID #:224), and the futility ruling rested, again, on "the negative judgment in the Colorado action" (*id.* at 21, Page ID #:229).

What stands apart (that § 1983 does not reach federal officers, and that the FTCA runs against the United States, not DHS) decides only that Plaintiffs named the wrong statute and the wrong defendant, and a footnote observing that the tort claims "may also be precluded" by limitations decided nothing. (*Id.* at 13 n.4, Page ID #:221.)

The first two are easily curable pleading defects; leave to amend was denied as futile on the fabrication. The fabrication, together with multiple documented and undenied allegations of professional misconduct, was the premise of the very rulings the Government says it could not have affected. It meets the outcome element the Government itself invoked.

Nor was it "Plaintiffs' narrative . . . pursuant to Rule 12 standards." (Dkt. 23 at 6, Page ID #:754.) The Government brought a factual attack, told the Court it "need not presume the truthfulness of the plaintiffs' allegations" (Dkt. 9 at 11, Page ID #:132) and supplied its own evidence. The Court resolved the attack on that evidence: "ICE asserts by affidavit that there is no record of a formal complaint." (Dkt. 13 at 11, Page ID #:219.) The discretionary-function premise came not from Plaintiffs but from the Government's representation that ICE and USAO-MO "made the reasoned decision" not to resume. (Dkt. 9 at 22, Page ID #:143.) A jurisdictional finding procured by fabricated jurisdictional evidence is the product of the fraud.

The officers who advanced this fabrication were held to a higher duty. The United States Attorney "is the representative not of an ordinary party to a controversy, but of a sovereignty," whose interest "is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 78, 88 (1935). In civil litigation, too, "[t]he Government's duty of honesty to the Court can never be excused, no matter what the circumstance. . . . Deception perverts justice." *Islamic Shura Council of S. Cal. v. FBI*, 779 F. Supp. 2d 1114, 1125 (C.D. Cal. 2011).

## VI. THE GOVERNMENT ASSUMED THE FRAUD, KNEW OF IT, WAS TOLD, AND BRUSHED IT ASIDE

Confronted in 2021 with the fabrication, the Office did not deny it. It assumed it: "assuming arguendo that [one] existed, it would not 'affect the outcome of the case.'" (Dkt. 23 at 5, Page ID #:753.)

It recited Plaintiff's allegation that its attorneys had "misled the Court regarding Escamilla's discovery that Greenway's former attorney[s] . . . **engaged in criminal**" activity and did not deny that either. (*Id.* at 6, Page ID #:754 (quoting Dkt. 21 at 47).) An officer of the court that learns its filings rested on fabricated evidence has one obligation, to correct them. 28 U.S.C. § 530B(a). The Office

instead assumed the fraud and defended the Judgment it produced. That choice, not any lapse by Plaintiff, is why the fabrication stands uncorrected.

This was not perjury by a party or witness that the adversary process could be expected to expose. It was fabrication carried into this Court by officers of the court, the wrong the Ninth Circuit recognized "where an immigration official and officer of the court forged and submitted evidence . . . to deprive an individual of his right to relief." *Lanuza, 899 F.3d at 1028.* The attorneys who carried it "represent the United States, and when they act, they speak for our government." Id. at 1034. And none of it was tested in 2018. Counsel conceded the § 1983 defect, and the Court never examined the purported ruling, the Ramey declaration, or the Park declaration. (Dkt. 10; *see* Dkt. 13 at 9, 14, 18.)

**The Office knew.** Each misrepresentation was refuted by the Office's own exhibits or the record before it.

*The Colorado ruling.* Gibson said a court had "found in **favor of Selakovic against Greenway Nutrients in regards to the assertion of the Greenway trademark**," and that his agency was "bound by decision of the court." (No. 2:26-cv-05207, Dkt. 9, Ex. I.)

The Office did not repeat that claim; it reworked it and adopted the result as its own. In 2018, Gibson's "ruling" became a dismissal that "leaves plaintiffs' valid ownership of Greenway's trademarks in doubt," a "reasoned decision" by ICE and USAO-MO not to resume, and a finding that "Greenway determined that it could not prevail." (Dkt. 9 at 11, 19, 22, Page ID #:132, #:140, #:143.)

In 2021, it became a civil suit that "did not reach a judgment on the merits," dated to "August 2015." (Dkt. 15 at 3, Page ID #:321.) Gibson said none of it. The Colorado docket the Office itself filed showed Chief Judge Krieger denying Selakovic's motion and confirming that Greenway's claims "were not adjudicated on the merits" and "were still viable." (Dkt. 9-2, Ex. 3, at 24, 26, Page ID #:171,

#:173.) The case was dismissed for failure to prosecute and obtain counsel. (*Id.* at 25, Page ID #:172.) Greenway "determined" nothing.

***The false Ryan name substitution.*** The Office told this Court that Plaintiff's evidence against Greenway's former attorney, Michael J. Ryan, was "actually rather old," because in June 2013 Plaintiff had sent "profanity-laced communications to Ryan, his ex-wife, and daughter." (Dkt. 9 at 18 n.11, Page ID #:139.) The evidence was not old. It was a Florida corporate filing dated March 31, 2016, in which Michael J. Ryan, who had signed Greenway's non-disclosure agreement, was named registered agent for Selakovic's HPC Acquisitions, Inc., with his own firm's address listed as HPC's principal office. (Fla. Dep't of State, Div. of Corps., HPC Acquisitions, Inc., Doc. No. F16000001594 (filed Mar. 31, 2016); No. 9:18-cv-81104, Dkt. 1 ¶¶ 109, 112, 115.)

Plaintiff first learned of it on or about **March 8, 2017** (id., Dkt. 102 at 96–97), and delivered it to Agent Gibson on **April 11, 2017**, nine months before the Office's motion (Dkt. 13 at 4, Page ID #:212).

An unknown and undisclosed public record created in 2016 cannot have been known in 2013. The June 2013 communications went to **Thomas F. Ryan**, a different person, and the exhibit Park swore to ***never*** mentions **Michael J. Ryan**. (Park Decl. ¶ 5, Ex. 4, Dkt. 9-2, Page ID #:149, #:174–191; Dkt. 14-1 ¶ 31, Page ID #:261.)

The lead buried by the false Ryan name substitution — advanced by USAO-CDCA officials led by then-United States Attorney Hanna and supported by AUSA Park's sworn declaration — was in no way trivial. In the Southern District of Florida, the claims of Plaintiff's company, Greenway, against Michael J. Ryan, James D. Ryan, their firm, The Ryan Law Group, LLC, and Vegalab, Inc. survived dismissal (No. 9:18-cv-81104, Dkt. 81), and Greenway documented diverted Ecowin product with a retail value exceeding $100 million, for which it was never compensated (*id.*, Dkt. 102 at 65).

*The investigation.* The Office told this Court that ICE and USAO-MO had "made the reasoned decision" not to resume the investigation (Dkt. 9 at 22, Page ID #:143) while withholding the record of that investigation. Concealment by one under a duty to disclose is fraud on the court. *Johnson v. Bell*, 605 F.3d at 339.

**The Government was told.** In 2021, Plaintiff put the fabrication before the Office three times (Dkts. 14, 18, 21). It answered first with a new account (Dkt. 15 at 3, Page ID #:321), then with the *assumption arguendo* (Dkt. 23 at 5, Page ID #:753).

On December 18, 2025, Plaintiff notified First Assistant United States Attorney Bilal Essayli that the 2021 opposition "did NOT deny any of the specific acts of fraud." (No. 2:26-cv-09383-AB, Dkt. 2, Ex. P.) DHS was told as well. Plaintiff's June 2025 complaint to the DHS Office of Inspector General set out Gibson's fabrication and the contrary Colorado record; DHS did not respond and has never corrected it. (*Id.*, Dkt. 19, Ex. B; *id.*, Dkt. 1 at 24, Page ID #:24.) In 2026, Plaintiff told the Office three more times. (*See* Notice, *supra*.)

**The Government brushed it aside.** On January 28, 2026, the Office's Victim Witness Coordinator answered that "[i]t does not appear that [Plaintiff is] an identified crime victim in a federal criminal proceeding. We cannot assist you." (No. 2:26-cv-05207, Dkt. 9, Exs. P–U; No. 2:26-cv-09383-AB, Dkt. 1 at 26, Page ID #:26.)

The same Office had told this Court, in its 2018 motion, that ICE and USAO-MO had investigated the defendants in Greenway's Colorado action for criminal trademark infringement and had recovered more than $20 million. (Dkt. 9 at 10, Page ID #:131.) Asked about sealed charges in the Western District of Missouri, it searched public cases in the Central District of California. (No. 2:26-cv-09383-AB, Dkt. 2, Ex. U.)

And in August 2026, before Chief Judge Gee, it called Plaintiff's claims "broad allegations of government misconduct that courts have repeatedly rejected,"

while stating that "the government does not address them here in substance." (*United States v. McCormick*, No. 2:20-CR-346(B)-DMG, ECF No. 864 at 4–5, Page ID #:11427–11428; *see* Part VII, *infra*.) The Office has said everything about the fabrication except whether it is true.

**The consequence is not abstract**. The investigation the fabrication suspended was, in this Court's own words, an "extensive investigation for criminal trademark infringement" of defendants in Greenway's Colorado action (Dkt. 13 at 2, Page ID #:210), among them Selakovic and Blackburn (Part II.A, *supra*).

Plaintiff has since placed the Government on written notice of the danger he faces from the enterprise that investigation targeted: DHS on April 24, 2020, and the Office on January 12, 2026.

He has received neither protection nor a response. (No. 2:26-cv-05207, Dkt. 9, Exs. O, R; *see* No. 2:26-cv-09383-AB, Dkt. 28.) Each unanswered notice is a further deprivation of due process under the Fifth Amendment: of an adjudication on a true record, of meaningful access to the courts, and of the fundamental fairness due process guarantees.

The fabrication that suspended DHS's criminal investigation, exacerbated by documented instances of undenied allegations of professional misconduct, now stands between the victim and the protection he has sought, and between him and due process of law.

Knowledge in 2018, an assumption arguendo in 2021, and silence in 2025 and 2026 are not the residue of an old error. (Dkt. 13 at 4, Page ID #:212; Dkt. 23 at 5–6, Page ID #:753–754; No. 2:26-cv-09383-AB, Dkt. 2, Ex. P.) Each is a fresh failure — by officers who held the record, the notice, and the means to act — to correct fabrications placed before this Court, and each renews the due-process injury this Motion seeks to remedy.

## VII. THE FRAUD IS ONGOING — THE SAME OFFICE INVOKED THE FRAUDULENTLY PROCURED JUDGMENT AGAINST PLAINTIFF IN 2026

On August 5, 2026, the same Office that placed Gibson's fabrication before this Court, and then repeatedly adopted, mischaracterized, and republished it, depriving Plaintiff of due process, fundamental fairness, and meaningful access to the courts, turned the Judgment it procured back against Plaintiff, conveniently glossing over and omitting the fabrication rather than addressing or curing it.

It did so before Chief Judge Dolly M. Gee in *United States v. McCormick*, No. 2:20-CR-346(B)-DMG, the prosecution of Plaintiff's nephew, a case 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 and Chief Assistant United States Attorney Jennifer L. Waier, Chief of the Criminal Division; AUSA Castañeda signed. (*Id.* at 2, Page ID #:11425.)

The Office had presented the fabrication under United States Attorney Nicola T. Hanna (Dkts. 9, 11) and defended it under Acting United States Attorney Tracy L. Wilkison (Dkts. 15, 23). Now it invoked the Judgment under First Assistant United States Attorney Bilal A. Essayli, the official Plaintiff had notified in writing, on December 18, 2025, of the fabrication and of the credible, non-frivolous, and undenied allegations of professional misconduct that compounded it. (No. 2:26-cv-09383-AB, Dkt. 2, Ex. P.) More than seven months later, the Office had answered none of it on the merits. It invoked the Judgment instead. Three administrations of the same Office, one fabrication, and not one correction.

Citing this action and its Judgment (Dkts. 1, 13), the dismissal of Plaintiff's 2021 petition (No. 2:21-cv-01910, Dkts. 10, 13), and the Ninth Circuit's affirmance, the Office described Plaintiff's "civil litigation and petitions" as "ill-fated," "all of which involve broad allegations of government misconduct that courts have repeatedly rejected." (ECF No. 864 at 4–5, Page ID #:11427–11428.)

It described this Judgment as "dismissing with prejudice" Plaintiff's complaint, without disclosing that the Court dismissed for want of subject-matter jurisdiction. (*Id.* at 4, Page ID #:11427.) And, noting that the defendant did not ask the court "to decide the allegations of misconduct," it stated that "the government does not address them here in substance." (*Id.* at 5, Page ID #:11428.)

The Office thus placed before a federal court a characterization of the victim that omitted the one fact that defeated it, in a proceeding where the victim had no right to be heard and no means to correct it. That is not advocacy on a disputed record. It is the Judgment the fabrication procured, deployed against its victim, stripped of the fact that the merits were never reached.

That representation was false, material, and misleading. No court has ever rejected Plaintiff's showing of fabrication on its merits. This Judgment dismissed for lack of subject-matter jurisdiction (Dkt. 13), and a dismissal for want of jurisdiction adjudicates ***nothing on the merits***. *Costello v. United States*, 365 U.S. 265, 284–85 (1961); Fed. R. Civ. P. 41(b).

Its alternative Rule 12(b)(6) rulings rested on Park's declaration (Part V, *supra*), and a court without jurisdiction cannot reach the merits in any event: "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, 101–02 (1998) (quoting *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1869)).

The 2021 order dismissed Plaintiff's petition sua sponte. (No. 2:21-cv-01910, Dkt. 10 at 2, Page ID #:294.) The Ninth Circuit affirmed on law-of-the-case grounds, and its only words on the subject confirm 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). That holding decided where the wrongdoing must be raised, not whether it occurred. The "different action" is this one. This Motion raises it here, and it asks for what due process has required from the start: a hearing on the merits of a fabrication no court has ever examined.

And the reason no court has reached the merits is the Office itself. In 2021, it met Plaintiff's showing of fabrication not with a denial but with a request that the motion be denied for noncompliance with Local Rules 7-3 and 11-6. (Dkt. 23 at 2, Page ID #:750.)

The first motion had already been struck under Local Rule 7-3. (Dkt. 20, Page ID #:541.) The fully briefed second motion was struck on the Office's own grounds, "[f]ailure to comply with Local Rules 7-3 and 11-6," without a word on the merits. (Dkt. 25, Page ID #:776.) Having prevented any adjudication in 2021, the Office, through AUSA Castañeda, cited the absence of one in 2026 as proof the allegations had been "repeatedly rejected." (ECF No. 864 at 4–5, Page ID #:11427–11428.) No court has rejected them on the merits. The Office has never denied them.

AUSA Castañeda's reliance on this Judgment also answers the Office's own 2021 argument that the fraud would not "affect the outcome of the case." (Dkt. 23 at 5, Page ID #:753.) Five years later, the Office is still invoking that outcome, against the victim, in another court. A party that continues to rely on the fruits of a fabrication cannot be heard to say the fabrication was immaterial. Tampering with the administration of justice "is a wrong against the institutions set up to protect and safeguard the public." *Hazel-Atlas*, 322 U.S. at 246. That wrong is renewed, and Plaintiff is again deprived of due process, each time the Judgment it procured is invoked.

And the Office, through AUSA Castañeda, invoked it where Plaintiff could not answer. The Judgment itself recites that federal agents met with Plaintiff about the criminal investigation of the defendants in Greenway's civil suit and told him he "may be able to recover from an established victims' fund." (Dkt. 13 at 2, Page ID #:210.)

Yet in a proceeding in which Plaintiff is not a party and had no right to be heard, the Office, through AUSA Castañeda, used the Judgment the Office's fabrication procured to discredit him before a federal court. That is the due-process injury in its present form: a fabrication never corrected, a Judgment never examined, and a victim disparaged by AUSA Castañeda, on behalf of the same Office, in a forum where he had no voice.

## VIII. NO TIME BAR APPLIES

The one-year limit of Fed. R. Civ. P. 60(c)(1) governs only motions under Rule 60(b)(1)–(3); it does not reach Rule 60(d)(3), for the Rule "does not limit a court's power to . . . set aside a judgment for fraud on the court." Fed. R. Civ. P. 60(d)(3). The power to vacate for fraud on the court "is so great, and so free from procedural limitations," that Rule 60(b) "provides no time limit on courts' power to set aside judgments based on a finding of fraud on the court." *Estate of Stonehill*, 660 F.3d at 443–44 (internal quotation marks omitted). Nor is imperfect diligence a bar, for "[t]he public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud." *Hazel-Atlas*, 322 U.S. at 246.

The Ninth Circuit applies the same principle to evidence a government attorney fabricates and places before a tribunal: the argument that the victim should have detected the fabrication sooner is "absurd," because the document "was provided by the government—a party normally thought to be trustworthy," and the tribunals "who review these cases for a living, believed it was authentic." *Lanuza*,

899 F.3d at 1034 n.11. So it was here: this Court itself adopted the Office's premise. (Dkt. 13 at 16 n.6, Page ID #:224.) Lanuza "should not be held to a higher standard," *id.*, and neither should Plaintiff.

## IX. THE JURISDICTIONAL DISMISSAL CARRIES NO PRECLUSIVE EFFECT, AND THE GOVERNMENT'S OWN POSITION FORECLOSES ITS RES JUDICATA DEFENSE

The Government argued, and this Court agreed, that the 2017 action was dismissed for lack of subject-matter jurisdiction. (Dkts. 9, 13.) It pressed the same position in 2021: "The alleged fraud would not establish jurisdiction where it does not exist." (Dkt. 23 at 6, Page ID #:754.)

That position forecloses any assertion of preclusion. A dismissal for lack of subject-matter jurisdiction is not an adjudication on the merits and carries ***no preclusive effect.*** *Costello*, 365 U.S. at 284–85; Fed. R. Civ. P. 41(b). And a court without jurisdiction "cannot proceed at all in any cause." *Steel Co.*, 523 U.S. at 94.

The Government cannot have it both ways. If the dismissal was jurisdictional, it bars nothing on the merits. If the Government now recharacterizes it as a merits adjudication, as it did before Chief Judge Gee in describing it as a dismissal "with prejudice" (ECF No. 864 at 4, Page ID #:11427), it contradicts the position on which it prevailed, and judicial estoppel forecloses the reversal. *New Hampshire*, 532 U.S. at 749–51.

Preclusion fails for a more fundamental reason. Due process forbids giving preclusive effect to a prior judgment unless the party against whom it is invoked had "a full and fair opportunity" to litigate the issue. *Allen v. McCurry*, 449 U.S. 90, 95 (1980); *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 480–81 (1982). Plaintiff never had one.

The only issue that matters here is whether this Judgment rested on a fabricated ruling, and it has never been litigated. It was not litigated in 2018, when

the fabrication was presented as fact and never tested. It was not litigated in 2021, when both motions were struck on the Government's local-rule objections. It was not litigated on appeal, where the Ninth Circuit held that the wrongdoing belonged to "a different action." A judgment procured by fabrication, and shielded from examination ever since, cannot be turned into a bar against the victim's first and only opportunity to be heard on it.

## X. CONCLUSION

Plaintiff asserts no independent cause of action under the Crime Victims' Rights Act and seeks none here. He seeks only what Rule 60(d)(3) empowers this Court to grant: relief from a judgment procured by fraud on the court.

That Judgment rests on the deliberate fabrication of a court ruling that no court ever made. The Colorado docket the Government itself filed refuted it. The Office nonetheless carried the fabrication into this Court through sworn declarations and its own briefs, recast it in 2018 and again in 2021, assumed it arguendo rather than deny it, and left it uncorrected after Plaintiff demanded correction in writing. As recently as August 2026, it invoked the Judgment it procured against Plaintiff, before a court in which he had no right to be heard.

For years, the only question that matters, whether this Judgment was procured by fabrication, has never been heard on its merits. Due process requires that it be heard now. A judgment so procured violated Plaintiff's clearly established due-process rights and carries no legitimate preclusive effect.

Plaintiff therefore respectfully requests that the Court:

1. Set aside the April 4, 2018, Judgment of Dismissal (Dkt. 13) pursuant to Federal Rule of Civil Procedure 60(d)(3);
2. Enter express findings, by clear and convincing evidence, that (a) no court ever ruled in favor of Selakovic "in regards to the assertion of the Greenway trademark"; (b) that purported ruling originated with DHS Agent Shawn

Gibson in the course of a criminal investigation, and was repeated by DHS Office of Professional Responsibility Resident Agent in Charge Russell Simons in administrative review, outside any judicial proceeding; (c) the United States Attorney's Office presented it to this Court (Dkts. 9, 11, 15) and has never denied it (Dkt. 23); and (d) the fabrication, and the Judgment it procured, deprived Plaintiff of due process of law under the Fifth Amendment, a deprivation renewed each time the Government has since invoked that Judgment, including on August 5, 2026 (*United States v. McCormick*, No. 2:20-CR-346(B)-DMG, ECF No. 864);

3. In the alternative, order the Government to answer, on the merits and under oath, each misrepresentation identified in Part II, and set an evidentiary hearing on the showing of fraud; and
4. Grant such further relief as the Court deems just and proper.

DATED: September 30, 2026.

Respectfully submitted,

_____

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

**DECLARATION OF GUSTAVO ESCAMILLA REGARDING LOCAL RULE 7-3 AND DATE OF DISCOVERY**

I, Gustavo Escamilla, declare as follows:

1. I am the Plaintiff in this action, appearing in my individual capacity and in propria persona. I have personal knowledge of the facts stated in this declaration and, if called as a witness, could and would testify competently to them.
2. Concurrently with the filing of this Motion, I am serving, by email and U.S. Mail, a letter to Assistant United States Attorney Alarice M. Medrano, Chief, Complex and Defensive Litigation Section, and Acting Civil Chief Daniel A. Beck, United States Attorney's Office for the Central District of California, 300 North Los Angeles Street, Suite 7516, Los Angeles, California 90012, identifying this Motion, its grounds, and the relief sought, and inviting the Government to state its position in writing. No pre-filing conference was held, for the reasons stated below.
3. A meet-and-confer conference would be futile. On more than five separate occasions over five years, the Government has been presented in writing with the fabrication at issue in this Motion and has declined every time to deny it, while characterizing my claims, before another court in a proceeding in which I could not respond, as "ill-fated" and "broad allegations of government misconduct that courts have repeatedly rejected" — in substance, that in enforcing my rights, I had placed meritless information before the courts. (No. 2:20-CR-00346(B)-DMG, ECF No. 864 at 4–5, Page ID #:11427–11428; *see* No. 2:26-cv-09383-AB, Dkt. 28, § II, at 9–10, Page ID #:1345–1346.)
4. For reasons of my personal safety, I did not confer with the Government by telephone or in person myself. On June 19, 2026, an attorney acting on my behalf in a limited-scope capacity advised Acting Civil Chief Daniel A. Beck

in writing that he remained available to confer. The Government did not confer. (No. 2:26-cv-09383-AB, Dkt. 18 at 10, Page ID #:850; Dkt. 19, Ex. A.) I have repeatedly notified the Government in writing of the documented danger I face as a witness who reported the enterprise at issue, and of specific acts of intimidation and surveillance directed at me and my family, including an incident in which three men attempted to breach my warehouse at night using flashlights to locate me, and unmarked vehicles observed at my residence. I requested protection. Each request was met with silence or refusal. (No. 2:26-cv-09383-AB, Dkt. 28, §§ V, VII, at 21, 26–27, Page ID #:1357, #:1362–1363; No. 2:26-cv-05207-AB-E, Dkt. 9, Ex. R, Page ID #:694–703.)

5. I remain willing to confer with the Government in writing at its convenience and will supplement this declaration upon any written response. No hearing on this Motion will be set until the action is reassigned.

6. No court has ruled on whether the April 4, 2018 Judgment was procured by fabrication. My 2021 motion raising that question was struck under Local Rule 7-3 (Dkt. 20), and my fully briefed second motion was struck under Local Rules 7-3 and 11-6 (Dkt. 25), in each case without a ruling on the merits. No evidentiary hearing has ever been held. The Government has never answered the fabrication on its merits.

7. As I attested under oath on July 9, 2021 (Dkt. 14-1 ¶¶ 6–8, 23, Page ID #:253–254, #:258), I first reviewed the Government's January–February 2018 filings in this action in March 2021, after purchasing copies of them. I had not reviewed them before then. The Government's filing in *United States v. McCormick*, No. 2:20-CR-00346(B)-DMG, signed by Assistant United States Attorney Patrick Castañeda, did not exist before August 5, 2026, the date it was filed. (ECF No. 864 at 1–2, Page ID #:11424–11425.) In it, the Government described my "civil litigation and petitions" to enforce my rights

as a crime victim as "ill-fated," "all of which involve broad allegations of government misconduct that courts have repeatedly rejected," and described the Judgment in this action as "dismissing with prejudice" my complaint, without disclosing that this Court dismissed for want of subject-matter jurisdiction. (*Id.* at 4–5, Page ID #:11427–11428.) That filing has not been corrected or withdrawn.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 30, 2026, at Glendale, California.

DATED: September 30, 2026.

Respectfully submitted,

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

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

The undersigned, Plaintiff in Pro Se, certifies that the Memorandum of Points and Authorities contains 9,641 words, exclusive of the caption, tables of contents and authorities, signature block, and this certificate. Because that exceeds the 7,000-word limit of L.R. 11-6.1, Plaintiff has requested leave to exceed it in the accompanying Notice.

DATED: September 30, 2026.

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

## 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.

Respectfully submitted,

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