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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

In Re:

GUSTAVO ESCAMILLA, an individual

Petitioner,

v.

UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF JUSTICE; and OTIS D. WRIGHT, II, in his official capacity as a United States District Judge,

Respondents.

Case No. CV 26-9383-HDV

PETITIONER'S UPDATED EMERGENCY NOTICE AND APPLICATION TO TAKE UP AND DECIDE THE CVRA/MVRA PETITION FORTHWITH AND TO IDENTIFY ASSETS FOR RECOVERY UNDER THE MANDATORY VICTIMS' RESTITUTION ACT; MEMORANDUM OF POINTS AND AUTHORITIES

[CRIME VICTIMS' RIGHTS ACT, 18 U.S.C. § 3771; AND FOR RELIEF UNDER THE MANDATORY VICTIMS RESTITUTION ACT, 18 U.S.C. §§ 3663A AND 3664, BY PETITION TO AMEND THE RESTITUTION ORDER UNDER 18 U.S.C. § 3664(d)(5), PURSUANT TO *IN RE DAVIS*, 146 F.4th 710 (9th Cir. 2025) (AS AMENDED AUG. 1, 2025) — TO BE DECIDED FORTHWITH]

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PETITIONER'S EMERGENCY UPDATED NOTICE AND APPLICATION TO TAKE UP AND DECIDE THE CVRA/MVRA PETITION FORTHWITH AND TO IDENTIFY ASSETS FOR RECOVERY UNDER THE MANDATORY VICTIMS' RESTITUTION ACT; MEMORANDUM OF POINTS AND AUTHORITIES

TO THE HONORABLE COURT AND ALL PARTIES:

I. INTRODUCTION

A federally identified crime victim has waited more than three months for a court to do what a federal statute commands be done "*forthwith.*" Petitioner Gustavo Escamilla — identified by the Department of Homeland Security as the Lead Victim of Operation Software Slashers, one of the government's largest counterfeiting investigations and prosecutions of its kind — respectfully requests this Court to end that wait at its earliest available convenience.

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

The statute could not be more direct. Section 3771(d)(3) commands that "the district court shall take up and decide any motion asserting a victim's right *forthwith*," and caps any continuance at five (5) days.

Many multiples of that period have elapsed. But the elapsed time is only the surface of the injury. Beyond the forthwith command, the Government's conduct has denied Petitioner the very rights the Crime Victims' Rights Act guarantees — the right to reasonable, accurate, and timely notice, 18 U.S.C. § 3771(a)(2); the right to confer with the attorney for the Government, *id.* § 3771(a)(5); the right to full and timely restitution as provided in law, *id.* § 3771(a)(6); and the right to be treated with fairness and with respect for the victim's dignity, *id.* § 3771(a)(8). Each of these the Government, through the United States Attorney's Office for the Central District of California, was bound to make its "best efforts" to accord. *Id.* § 3771(c)(1). It made none.

And it cannot claim it did not know. The Government has been on notice since May 18, 2026, when the United States Attorney's Office was served in the underlying matter and acknowledged receipt of the Emergency Petition by its own letter of June 2, 2026; it was served again under Federal Rule of Civil Procedure 4(i) on June 24, 2026; and it was served once more, as to all Respondents, on August 26, 2026, as set forth below. Across those three months and three separate services, the Government has neither appeared, responded, nor accorded Petitioner a single right.

And there is now proof of the fund itself. Petitioner has identified the government's own records of the seized assets and forfeiture fund — over $20 million — arising from the Operation Software Slashers criminal investigation, in a sworn federal forfeiture complaint verified, under penalty of perjury, by the very DHS agent at the center of this matter, Supervisory Special Agent Shawn S. Gibson. (Ex. C.) It is the same Agent Gibson who later fabricated a nonexistent court ruling — one no court ever issued — and used it to suspend the DHS criminal investigation, strip Petitioner of his victim status, and withhold the more than $20 million in restitution the law makes mandatory. The records prove what the Government has for years refused to acknowledge: the fund exists, the victim was identified, and the money — over $20 million of it — has been there all along, in the Government's own hands. These are records the United States Attorney's Office and the Government could readily have provided, but have repeatedly failed to address or disclose, and have withheld from Petitioner unnecessarily. That is why this Application is brought now.

The Government has been served. Without waiving Petitioner's position that the summons-and-answer apparatus has no application to a victim's-rights motion under 18 U.S.C. § 3771(d)(3), and without conceding that any such service was required or proper, all three Respondents — the United States, the United States Department of Justice, and Respondent Otis D. Wright, II — were served, and the

executed returns filed of record, on August 26, 2026, as set forth in Section VII below. (Ex. A.) The record is documented, sworn, and undenied on the merits. Nothing procedural stands between the USAO-CDCA officials and their statutory duty, or between this Court and the forthwith adjudication the statute commands. Petitioner respectfully requests that it be entered at the Court's earliest convenience accordingly.

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

Restitution under the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3663A and 3664 (MVRA), is mandatory, not discretionary. This is not a case at the margins of the MVRA; it sits at its *core*. Restitution is mandatory under 18 U.S.C. § 3663A(a)(1) for the offenses described in § 3663A(c)(1)(A)(ii) — "an offense against property under this title … including any offense committed by **fraud or deceit**."

The Operation Software Slashers prosecution was exactly that: a counterfeit-goods and trademark-trafficking conspiracy carried out by **fraud and deceit** — the very kind of offense for which Congress made restitution mandatory. The Department of Homeland Security identified Greenway as its Lead Victim. Petitioner is therefore a "victim" as § 3663A(a)(2) defines the term — "a person directly and proximately harmed" by the offense, including one harmed "in the

course of the scheme, conspiracy, or pattern." For such offenses and such victims, the statute leaves no room for discretion. The court "shall order" restitution. 18 U.S.C. § 3663A(a)(1).

That single word — "***shall***" — is the answer to everything the Government has done here. A mandatory obligation cannot be recast as a discretionary one the Government was free to withhold. Yet that is precisely what occurred: a victim the Government itself identified was summarily stripped of the restitution the law commands.

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

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

enforceable in the district court. That decision was issued June 2, 2025 — a cause of action unavailable before that date. It post-dates every prior ruling in this matter, was never argued or decided in any of Petitioner's earlier cases because it did not yet exist and forecloses any reliance on the earlier dismissals: issue preclusion does not bar relitigation where "the issue is one of law and a new determination is warranted in order to take account of an intervening change in the applicable legal context," and *In re Davis* is precisely such a change.

The framework *In re Davis* established is satisfied here element for element, as set out in full in the Petition (No. CV 26-9383-HDV, Dkt. 1, § X, at 78–80), incorporated by reference: (i) because the Operation Software Slashers prosecution was filed under seal in the Western District of Missouri and no official has ever disclosed its disposition to Petitioner, "no prosecution is underway" and venue lies where the crimes caused harm — the Central District of California. *In re Davis*, 146 F.4th at 715, 720; (ii) a post-judgment § 3664(d)(5) petition "fall[s] comfortably within 'any motion'" asserting a victim's right, the word "any" being "broad and all-encompassing." *Id.* at 722–23; (iii) "further losses" includes losses the victim always knew of but did not know had been omitted from the restitution determination — precisely Petitioner's circumstance, because the Government has never disclosed whether Greenway's losses were included, excluded, or never addressed. *Id.* at 732.

Element four is the sword. *In re Davis* holds that government institutional failure itself supplies good cause to amend restitution under § 3664(d)(5). *Id.* at 732. And no showing of victim diligence is required, because "[n]o victim shall be required to participate in any phase of a restitution order." 18 U.S.C. § 3664(g)(1).

The burden of the restitution process fell on the Government, *not* the victim. Petitioner's showing exceeds *Davis*: the Government identified Petitioners' company Greenway as the Lead Victim, represented that an established victims' fund existed, then held the seized fund — in excess of $20 million — documented in the Bohling-signed, Gibson-sworn forfeiture complaint (Ex. C), and disclosed nothing. Where institutional failure alone suffices, affirmative misrepresentation that manufactured the victim's exclusion establishes good cause *a fortiori*.

Finally, the relief Petitioner seeks is deliberately narrow. He seeks declaratory relief and the enforcement of his prospective rights under the Crime Victims' Rights Act and the Mandatory Victims Restitution Act — no damages, no vacatur of any prior order, and no finding of fraud on the court. *See* 18 U.S.C. § 3771(d)(6).

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

and the disciplinary sanctions § 3771(f)(2)(C) requires for employees who "willfully or wantonly fail to comply" with victims'-rights obligations — and respectfully leaves to the Court's discretion whether any such notation or referral is warranted on this record. The Attorney General Guidelines for Victim and Witness Assistance and the Justice Manual reflect these same obligations.

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

The Government's central defense reduces to a single, untenable proposition: that the federal criminal proceeding it once described in its own words, and won a judgment upon, never existed. It cannot be heard to say so. The Government is foreclosed from that argument several times over — by the defense on which it won, by this Court's adoption of the facts, and by its own sworn filings. Petitioner sets the grounds out in descending order of force. Each is independently dispositive, and each is developed at length in Petitioner's Application to Take Up and Decide (No. 2:26-cv-05207-AB-E, Dkt. 20, § VI), incorporated here by reference.

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

this Court that ICE and USAO-MO, "in their discretion, made the reasoned decision that they would not resume their **investigation**."

That representation was the Government's ticket to a judgment. But it carried a cost the Government cannot now escape; it is logically impossible unless the investigation was real. One does not exercise discretion whether to "resume" a DHS criminal "**investigation**" that never began.

And the moment that DHS criminal "investigation" existed, so did Petitioner's victims' rights under the CVRA. When DHS officials notified Petitioner and his business partner of their ongoing and massive criminal investigation and identified Greenway as a victim in the Operation Software Slashers prosecution, his rights and status under 18 U.S.C. § 3771(c)(1) attached — and the Government, as Respondents knew or had the means reasonably to know, was bound to accord them.

The Government cannot invoke the investigation to win its judgment and then disclaim it to defeat the victim it created. One cannot make a discretionary decision not to "resume" an investigation that never occurred. And the contradiction runs deeper still: in the very proceedings where it defended DHS Agent Shawn Gibson's fabricated ruling, the Government simultaneously acknowledged that the DHS criminal investigation existed — the same investigation it now asks this Court to treat as though it never occurred. The Government cannot have it both ways. It

certainly cannot strip a victim of the rights, status, and restitution that its own concession brought into being.

This is the office of judicial estoppel. A party "who has successfully maintained a certain position in a legal proceeding" may not, "simply because his interests have changed, assume a contrary position." *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001). And the Ninth Circuit applies that bar precisely 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, 782–83 (9th Cir. 2001). This Court did exactly that: it adopted the Office's factual narrative and cited it to "Mot. 3." The Government kept the judgment. It cannot disown the premise that produced it.

Second: this Court adopted those same facts — and attributed them to the Government's own filing. The April 4, 2018, Order recited DHS's extensive criminal "investigation," the governments recovery of over $20 million, the established **victims**' restitution fund, and the USAO-MO's agreement that Greenway "would be added as a **victim** in the government's case" — citing each not to Petitioner's complaint, but to "Mot. 3," the Office's own motion. That attribution is dispositive: it confirms these are the Government's representations, judicially adopted — not allegations the Court merely repeated back.

Third, at the floor: the Government adopted the investigation as its own statement of facts — not once, but repeatedly. In its January 29, 2018 Motion to Dismiss (No. 2:17-cv-07748, ECF No. 9, at 10), the Office did not summarize Petitioner's allegations. It set the criminal investigation out under its own heading, in its own declarative voice, stating that ICE and USAO-MO had been investigating the Greenway-investor defendants for criminal trademark infringement and had recovered over $20 million. That was not the only time. The same Office repeated the account in its subsequent filings — including its July 19, 2021 opposition (No. 2:17-cv-07748, ECF No. 15) and its October 25, 2021 opposition to Petitioner's fraud-on-the-court motion (No. 2:17-cv-07748, ECF No. 23), which challenged those facts only "arguendo" and never on the merits. A litigant is bound by the factual narrative it presents in its own brief. This Government presented it again and again.

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

The civil forfeiture complaint in United States v. $442,992.97 in U.S. Currency, et al., No. 15-0079-CV-W-DGK (W.D. Mo., filed Jan. 30, 2015) — signed by Assistant United States Attorney James Curt Bohling of USAO-MO and verified under penalty of perjury by DHS/ICE Supervisory Special Agent Shawn S. Gibson — documents the seizure of the very assets tied to the Operation Software Slashers prosecution, in excess of $20 million. (Ex. C.) It is the Government's own sworn instrument. It names the investigation. It catalogs the seized fund. And it was

verified by the same agent — Gibson — who would later fabricate the ruling used to make that fund, and Petitioner's status, disappear.

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

In 2016, that same agent told Petitioner the opposite — that a court had ruled against him, in a completely fabricated ruling, pulled from the "ether," that no court ever issued — and, somehow, the victims' restitution fund the Government had previously acknowledged existed fell silent. One of those statements is a federal record. The other is a fabrication. The Government has spent years litigating as though the fabrication were the truth.

That is the fact the Government now asks this Court to treat as imaginary: a fund its own agent swore to under penalty of perjury. Until now, the Government had never pinpointed or acknowledged the seized-asset pool, and Petitioner had never before placed documentary proof of it before a court. That proof now exists — of record, on the public docket, in the Government's own hand. The threshold fact is no longer contestable, and it is not contestable for the simplest of reasons: not because Petitioner asserts it, but because the Government swore to it.

IV. RESPONDENT WRIGHT EXCEEDED HIS AUTHORITY AND PERFORMED AN ACT NOT JUDICIAL IN NATURE

What Respondent Wright did in the April 2, 2021 Order was not an exercise of judicial power. It was an act not judicial in nature — a court reaching a decision it had, in the same breath, declared it had no authority to reach. Having found that his Court lacked subject-matter jurisdiction, Respondent Wright was empowered to do exactly one (1) thing: note the defect and dismiss. "Without proper jurisdiction, a court cannot proceed at all, but can only note the jurisdictional defect and dismiss the suit." *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 94 (1998); accord *Bell v. Hood*, 327 U.S. 678, 682 (1946). Anything beyond dismissal "carries the courts beyond the bounds of authorized judicial action" and "offends fundamental separation-of-powers principles." *Steel Co.*, 523 U.S. at 94.

That is the most basic limit on judicial power there is: a court that has found it lacks jurisdiction has found it lacks authority to decide anything else. It may close the door. It may not walk through it.

Respondent Wright walked through it. The April 2, 2021 Order dismissed for want of subject-matter jurisdiction — and then, from an order that could lawfully do nothing but dismiss, it reached findings against the victim. It found that Petitioner had "failed to identify a criminal proceeding," and it branded his sworn account of the sealed Western District of Missouri prosecution "speculation pulled from the

ether." Those are not jurisdictional observations. They are merits findings — determinations of fact and credibility — rendered by a court that had just declared it had no power to reach the merits at all.

A court with no jurisdiction has no power to weigh a victim's credibility. Respondent Wright weighed it anyway and ruled against the victim on it. That is not a claim of legal error. A wrong ruling is one a court had the power to make and made incorrectly; this is different in kind — a court reaching a question it had stripped itself of the power to reach, in a criminal matter over which it had no involvement, no oversight, and no authority whatsoever. In the precise sense the Supreme Court used in *Steel Co.*, it was an act beyond "the bounds of authorized judicial action." It was not, in any recognized sense, a judicial act at all. These grounds are set out in full in Petitioner's Application and Notice to Disqualify (No. 2:26-cv-05207-AB-E, Dkt. 47, § VII-B), incorporated here by reference.

The rule is absolute (*Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 94 (1998)):

A court that finds it lacks subject-matter jurisdiction may do one thing only — "**note the jurisdictional defect and dismiss the suit**." Anything more "**carries the courts beyond the bounds of authorized judicial action**" and "**offends fundamental separation-of-powers principles**."

What Respondent Wright did instead (April 2, 2021 Order, Page ID #:293–294):

From an order that could lawfully do nothing but dismiss, he reached findings against the victim — weighing the credibility of a sworn account and branding

it "**speculation pulled from the ether**." **A court with no jurisdiction has no power to weigh a victim's credibility.** He did so anyway.

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

April 4, 2018, Order (No. 2:17-cv-07748-ODW-MRW, Dkt. 13, at 2, Page ID #:210) — recited:

"**extensive investigation for criminal trademark infringement**"; that "ICE and the United States Attorney's Office had recovered **over $26 million** in the investigation"; that Petitioner "**may be able to recover from an established victims' fund**"; and that USAO-MO "**agreed that Greenway would be added as a victim in the government's case**."

April 2, 2021 Order (No. 2:21-cv-01910-ODW, Dkt. 10, Page ID #:293–294) — held:

that Petitioner "**failed to specifically identify a criminal proceeding supporting their claim that they have been victimized by the United States or the Department of Homeland Security and its agents**" — in the very order quoting Petitioner's identification of "**criminal proceedings being conducted in the Western District of Missouri**" — and found that account "**merely speculation pulled from the ether**," concluding that Petitioner had "**supplied no basis to establish any rights under the Crime Victims' Rights Act**."

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The Court recited the very proceeding it said had not been identified. Petitioner's account was not his own conjecture — it was a representation of what DHS Agent Gibson had told Petitioner and his business partner during a recorded face-to-face meeting: that the prosecution of the Selakovic defendants had been filed under seal in the Western District of Missouri. Respondent Wright branded that representation — Gibson's own, relayed by the victim — as "speculation pulled from the ether."

Respondent Wright had no basis whatever to make that characterization. He was not a party to the meeting at which Gibson made the representation. He had no firsthand knowledge of what was said. He was not present, and he had no authority — none — to weigh, discredit, or reject a federally identified crime victim's sworn account of it. What he did instead was brand as fiction the recorded words of the government's own agent, and in doing so he discredited a victim who had already been victimized once — by the very system meant to protect him.

And Respondent Wright knew, or had the means reasonably to know, that he was performing an act not judicial in nature — because the sealed investigation was real, and he had written it into the record himself. He had recited the DHS criminal investigation and its restitution, and he had reviewed the emails in which DHS Agent Gibson conferred victim status on Petitioner and Greenway. He documented all of it in 2018. In 2021, he called the same investigation imaginary. The investigation he

dismissed as "pulled from the ether" is the investigation he had documented as fact three years earlier. A fact a court finds and records cannot become a fiction because the same court later finds it inconvenient.

This is the sum of it. A court that had declared it possessed no jurisdiction reached into the merits it had no power to touch, weighed a sworn victim's credibility it had no power to weigh, and contradicted its own record to do it. And the findings it reached were not neutral. They were harmful and discrediting on their face — branding a federally identified crime victim's sworn, corroborated account as "speculation pulled from the ether" — and those discrediting statements, which Respondent Wright had no authority to make in the first place, are the very mechanism by which Petitioner lost his status, his rights, and every dollar of the restitution the law makes mandatory. That is not an adjudication. It is not error. It is an act not judicial in nature — one that caused the precise harm the victim now asks this Court to undo — and the law does not permit a court to perform it. This contradiction is developed in full in Petitioner's Application and Notice to Disqualify (No. 2:26-cv-05207-AB-E, Dkt. 47, § IV), incorporated here by reference.

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

Begin with what these officials did *not* do. They did not prosecute the Operation Software Slashers defendants. That prosecution — of Selakovic, Blackburn, and the entities Selakovic owned and controlled — was conducted under seal by USAO-MO in the Western District of Missouri. The USAO-CDCA officials whose conduct is at issue — Assistant United States Attorney Patrick Castañeda, First Assistant United States Attorney Bilal A. Essayli, Assistant United States Attorney Kathrynne Seiden, and Assistant United States Attorney Laura A. Alexander — had no part in it. No charging decision. No prosecutorial discretion. No presiding or supervisory role of any kind. They were strangers to the case that made Petitioner a victim.

And that is what makes what follows so difficult to explain. Having no authority to decide Petitioner's victim status — having played no role whatever in the prosecution that conferred it — the Government, through these officials, decided it anyway. It decided it against him. And it did so by advancing a fabrication.

The law does not permit that, and it does not shield it. Immunity turns on the *function* an official performs, not the office he holds. A prosecutor is absolutely immune only for conduct "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976). But "[a] prosecutor's administrative duties and those investigatory functions that do not relate to an advocate's preparation for the initiation of a prosecution or for judicial

proceedings are not entitled to absolute immunity." *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993). When officials act as investigators or administrators, they "may enjoy only qualified immunity for that conduct." *Id.* at 273–74. Confirming whether Petitioner is the crime victim the Office and this Court had already identified is an administrative and investigative act — reading a file, not exercising judgment before a tribunal.

And to the extent the deprivation rested on fabrication, no immunity attaches at all. The Ninth Circuit has held as much — on facts materially identical to these, and involving the same federal agency. In *Lanuza v. Love*, 899 F.3d 1019 (9th Cir. 2018), a DHS/ICE official "intentionally submitted a forged document" that barred an individual from relief to which he was "otherwise lawfully entitled." The court refused immunity, holding that it "was not meant to protect those who are 'plainly incompetent or those who knowingly violate the law.'" *Id.* at 1029, 1034. "[T]his case," the court wrote, "is about a lie, and all the ways it was used, over several years, to defraud the courts." *Id.* at 1021. So is this one. What *Lanuza* condemned — a DHS fabrication used to strip a party of relief he was entitled to — this record repeats.

Nor was the deprivation inadvertent. The Government had every record it needed to confirm Petitioner's status — its own Office's prior filings identifying the DHS criminal investigation, this Court's April 4, 2018, Order reciting it, and the

USAO-MO agreement to add Greenway as a victim. Castañeda, Essayli, Seiden, and Alexander knew, or had the means reasonably to know, exactly who he was. They had only to read their own file. The Office said as much in writing. When Petitioner sought assistance, its Victim-Witness Specialist, Allison Stafford, responded that "[i]t does not appear that you are an identified crime victim in a federal criminal proceeding," and that "[w]e cannot assist you" — a refusal of the very duty the Office was mandatorily bound to perform, issued by an official acting in a purely administrative capacity.

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

And the Government's knowledge did not end in 2021 — it was renewed, formally and in writing, and the Government compounded the deprivation anyway. On December 18, 2025, Petitioner served the Office with a formal Notification of Alleged Misconduct, addressed to First Assistant United States Attorney Bilal A. Essayli and copied to the Attorney General, the Department's Office of Professional Responsibility, the Office of Inspector General, and the Victims' Rights

Ombudsman, identifying the fabrication and the deprivation it produced. Through January 2026, Petitioner renewed that notice again and again — in his correspondence and protection requests to the Office's own Victim-Witness Specialist. The Government thus had actual, written notice of the misconduct. It did not investigate it. It did not correct it. Instead, it aggravated it: on August 5, 2026 — months after being told, in writing, that the narrative was false — the same Office, through Castañeda, Essayli, Seiden, and Alexander, advanced that very narrative again, in a collateral proceeding where Petitioner was not a party and could not answer. A litigant who is shown its position is built on a fabrication and presses it anyway is not acting in good faith. It is compounding the deception.

And what the law guarantees him is specific. In advancing that fabrication, the Government — through officials bound by 18 U.S.C. § 3771(c)(1) to make their "best efforts" to see that crime victims are accorded their rights — denied Petitioner:

- his right to reasonable, accurate, and timely notice of the proceeding and the fund, 18 U.S.C. § 3771(a)(2);
- his right to confer with the attorney for the Government, *id.* § 3771(a)(5);
- his right to full and timely restitution as provided in law, *id.* § 3771(a)(6); and
- his right to be treated with fairness and with respect for [his] dignity, *id.* § 3771(a)(8) — the very right violated when his sworn, corroborated account was branded "speculation pulled from the ether."

Respondent Wright, for his part, knew or had the means reasonably to know that each of these rights had attached and was being denied — because his own April 4, 2018, Order had recorded the very facts that conferred them. He deprived the victim of them anyway.

The Government cannot shelter behind a prosecutorial function it never performed. It prosecuted nothing in Operation Software Slashers. Through Castañeda, Essayli, Seiden, and Alexander, it "investigated" a victims' rights and status it already knew, or had the means reasonably to know; it administered a file its own Office had already written; and it repeatedly, over years, advanced DHS Agent Gibson's fabrication to defeat the very victim's rights that file conferred — knowingly, without any authority to decide the question at all, and after formal written notice that spanned the July through November 2021 proceedings and Petitioner's renewed notifications of December 2025 through February 2026.

That is the distinction that decides this section. The Government did not act as a prosecutor — much less an advocate before a tribunal — in DHS's and USAO-MO's Operation Software Slashers criminal investigation or prosecution. It had no role in that case at all.

What it did instead was act in an investigative and administrative capacity, the precise function for which *Buckley* and *Imbler* withhold absolute immunity. And it

did so by pressing forward with the very kind of government fabrication the Ninth Circuit condemned in *Lanuza v. Love* — a DHS lie "used, over several years, to defraud the courts," which "would tempt others to do the same" if left unremedied. 899 F.3d at 1021, 1034. The Government was shown the fabrication was a fabrication. It pressed it anyway. No immunity reaches that conduct, and this Court should declare it for what it is.

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

By August 5, 2026, the Government had run out of excuses. It had recited the investigation in its own filings. It had been told, in writing, that the narrative was false. And it chose to advance that narrative one more time — in the one place the victim could not answer it.

On that date, in the collateral criminal proceeding *United States v. McCormick*, No. 2:20-CR-00346(B)-DMG (ECF No. 864) — a proceeding before the Honorable Chief Judge Dolly M. Gee in which Petitioner is not a party and cannot defend himself — the Government, through AUSA Castañeda, First Assistant United States Attorney Essayli, AUSA Seiden, and AUSA Alexander, placed Petitioner's victim status and his pending CVRA petitions directly at issue, and

characterized his documented claims as meritless and repeatedly rejected. Those statements were false, material, and misleading.

They were false because Petitioner's claims have never been rejected on the merits. The prior dismissals were jurisdictional — and a court without jurisdiction adjudicates nothing. *See Costello v. United States*, 365 U.S. 265, 285 (1961); Fed. R. Civ. P. 41(b) (a dismissal for lack of jurisdiction does not operate as an adjudication on the merits). They were material because they were offered for the express purpose of defeating Petitioner's status. And they were misleading on the filing's own face:

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

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

And these officials knew better. The same Office's own filings, and this Court's own April 4, 2018, Order (No. 2:17-cv-07748, Dkt. 13, at 2, Page ID #:210), had already recited the sealed OSS investigation, the recovery of over $20 million, and the USAO-MO agreement to add Greenway as a victim. Petitioner had answered the August 5, 2026, filing directly, in his August 10, 2026, Response (No. 2:26-cv-05207, Dkt. 27) and had placed the same misconduct before the Office months earlier still — in his December 18, 2025, Notification of Alleged Misconduct to First Assistant United States Attorney Essayli, and his January 2026 correspondence. The records that disproved the Government's representations were not obscure. They were the Government's own, sitting in the Government's own file. Having acted throughout in an investigative and administrative capacity — with every means to know the truth — the Government advanced the alleged falsehood anyway.

That is the definition of the standard. Deliberate indifference and conscious disregard are not established by what an official could not have known; they are established by what an official knew, or had every means to know, and disregarded.

The Government knew. It had been told. It had the file. And it repeated DHS Agent Gibson's fabrication anyway — the non-existent civil trademark ruling, purportedly entered in favor of Selakovic and against Greenway, that no court ever issued, and that was used to dissuade a victim from coming forward with material evidence and testimony during then-active criminal proceedings. It repeated that

fabrication against a victim who was not a party, in a forum where he could not appear, before a judge who had no reason to suspect the account was false. Choosing the one venue where the victim could not respond is not a neutral litigation choice. It is the conduct of a party that knows its position cannot survive an answer

This is not an isolated act. It is the latest instance of a single, continuous course of conduct this Application has traced from its origin: DHS Agent Gibson's fabricated ruling (§ III); Respondent Wright's use of that fabrication to reach findings he had no jurisdiction to make (§ IV); and the Office's repeated invocation of the same falsehood while acting in a capacity no immunity shields (§ V). The August 5 filing is that course of conduct brought current — the same lie, advanced one more time, in the one forum designed to keep the victim silent.

It also mirrors, in successive form, the very misconduct the Ninth Circuit condemned in *Lanuza v. Love*, 899 F.3d 1019 (9th Cir. 2018) — a fabricated official document "**used, over several years, to defraud the courts**," which stripped a party of relief he was owed, regardless of title. The court warned that leaving such conduct unremedied "**would tempt others to do the same**." *Id.* at 1021, 1034.

The Government has now done the same thing, over more years, to this victim — and asks this Court to let it stand. This Court should not. Petitioner asks only that it declare the conduct for what the record shows it to be.

VII. SERVICE IS PERFECTED AND THE STATUTE'S FIVE-DAY LIMIT HAS LONG SINCE PASSED

Service is not merely perfected; it is documented and complete as to every Respondent. On August 25, 2026, Petitioner supplied the Clerk of Court with the executed, returned summonses establishing service on all three Respondents — the United States, the United States Department of Justice, and Respondent Otis D. Wright, II, in his official capacity — effected consistent with Fed. R. Civ. P. 4(i): service on the Civil Process Clerk for the United States Attorney's Office for the Central District of California, certified mail to the Attorney General, and service on Respondent Wright through the United States Attorney's Office under Rule 4(i)(2). The proof of that service is of record and is attached as Exhibit A to this Application: the executed summonses and proofs of service for all three Respondents, together with the United States Postal Service delivery confirmations, file-stamped by the Clerk of Court on August 26, 2026, at 4:20 p.m.

Consider what that record actually shows. A federally identified crime victim — the person the Crime Victims' Rights Act exists to protect — served the United States, served the Department of Justice, and served a sitting United States District Judge, three times over, through every channel Rule 4(i) prescribes, to enforce a statute that imposes no service requirement on him at all. He did the Government's

procedural work for it, and then some. And the Government's response, across every service and every month, was silence.

Petitioner undertook that service on a belt-and-suspenders basis, and in doing so disclaimed and forwent none of his rights under the Crime Victims' Rights Act. The traditional summons-and-answer apparatus of Federal Rule of Civil Procedure 4 has no application to a victim's-rights motion under 18 U.S.C. § 3771(d)(3), which the statute commands the Court to "take up and decide … forthwith," and which § 3771(d)(3) is itself titled — "Motion for relief and writ of mandamus" — not a civil action commenced by summons. No such summons-and-answer precondition appears anywhere in the Crime Victims' Rights Act, the Attorney General Guidelines for Victim and Witness Assistance, or the Justice Manual. Petitioner effected Rule 4(i) service only to eliminate any conceivable procedural objection — not because the machinery of an ordinary civil suit governs a statutory motion Congress ordered decided at once.

Petitioner placed this precise point before the Government in writing. In his August 17, 2026 letter to Acting Civil Chief Daniel A. Beck — filed of record and attached as Exhibit B (No. 2:26-cv-05207-AB-E, Dkt. 44, at 19–25, Page ID #:1142–1148) — Petitioner advised that the Rule 4 service framework and Local Rules 6-1 and 7-3 are inapplicable to a self-executing Crime Victims' Rights Act enforcement action, and invited the Government to identify any provision of the Crime Victims'

Rights Act, the Attorney General Guidelines for Victim and Witness Assistance, or the Justice Manual imposing any such precondition. The Government identified none, because there is none. Having been told, and having declined to rebut it, the Government cannot now manufacture a service or meet-and-confer objection to defer the adjudication the statute commands.

Here, then, is the final absurdity. The Government was under no right to demand service, yet it was served — completely, and three times over. It was invited to identify a single authority requiring any of it, and it identified none. It was given every opportunity to appear, to respond, to confer, and it took none. A statute that commands decision "forthwith," and caps any continuance at five days, has instead run untouched for months — not because the victim failed to act, but because the Government declined to. The party the law charges with protecting the victim has spent that time doing nothing but running out his clock.

That completed service is why this Application is ripe now. With the executed returns of record, no service objection remains, and the statute's forthwith mandate is squarely presented: the five-day outer limit on any delay began to run no later than August 25, 2026, and it has long since elapsed. That limit independently forecloses any request by the Government for additional time, because the statute permits no continuance beyond five days. The elapsed delay is not merely unreasonable; it is affirmatively barred by the statute's text.

VIII. RELIEF REQUESTED

The Petition sets out the full relief Petitioner seeks on the merits. This Application asks something narrower and antecedent: that the Court do what the statute commands and the record now compels — take up and decide that Petition, forthwith. Petitioner does not ask this Application to adjudicate the merits the Petition reserves; he asks only that the door the Government has held shut for months be opened, so those merits can at last be heard — respecting, in the meantime, the orderly completion of the related-case determination now pending under General Order 08-05, § 5.2.

For the foregoing reasons, and on the full record incorporated by reference, Petitioner respectfully requests that the Court, pursuant to 18 U.S.C. § 3771(d)(3):

1. TAKE UP AND DECIDE the Emergency Petition forthwith, as § 3771(d)(3) commands — the statute's five-day limit having long since elapsed, service being complete and of record (Ex. A), and the Government having offered no ground to defer — such decision to be rendered at the Court's earliest convenience consistent with the orderly completion of the related-case determination now pending under General Order 08-05, § 5.2, and without further delay once the matter is properly before the deciding judge;

2. DIRECT THE UNITED STATES TO RESPOND on the merits within a time certain consistent with the statute's five-day limit, so that the Petition is ripe for decision the moment the related-case determination is complete;

3. DECLARE, consistent with the record set out in Section IV, that the April 2, 2021, Order — having dismissed for want of subject-matter jurisdiction — exceeded the bounds of authorized judicial action in reaching findings against Petitioner on the merits, that in doing so it performed an act not judicial in nature, and that those findings are therefore not entitled to preclusive effect;

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

5. RECOGNIZE, for purposes of the relief the Petition seeks, that Petitioner is a crime victim within the meaning of 18 U.S.C. § 3771(e)(2)(A), directly and proximately harmed by an offense committed by fraud or deceit under 18 U.S.C. § 3663A(c)(1)(A)(ii), whose rights under the Crime Victims' Rights

Act and the Mandatory Victims Restitution Act have never been discharged or accorded;

6. NOTE, FOR THE MANDATORY-RESTITUTION RELIEF THE PETITION SEEKS, that the assets from which that restitution is owed have now been identified of record: the seized-asset pool arising from the Operation Software Slashers investigation — in excess of $20 million — documented in the civil forfeiture complaint verified under penalty of perjury by DHS/ICE Supervisory Special Agent Shawn S. Gibson and signed by AUSA James Curt Bohling, *United States v. $442,992.97 in U.S. Currency, et al.*, No. 15-0079-CV-W-DGK (W.D. Mo.) (Ex. C) — assets the Government already holds and to which the Court may refer in ordering the mandatory restitution the Petition seeks under 18 U.S.C. §§ 3663A and 3664(d)(5);

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

8. GRANT such other and further relief — declaratory, prospective, and administrative — as the Court deems just and proper; provided that nothing in this Application or the relief requested herein shall waive, release, or limit

any separate claim, right, or remedy Petitioner may possess under any other statutory or common-law framework arising from the same conduct, all of which are expressly reserved. Petitioner seeks no damages in this proceeding.

Respectfully submitted,

DATED: August 31, 2026.



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

The undersigned, Petitioner Gustavo Escamilla, appearing pro se, certifies that the foregoing PETITIONER'S UPDATED NOTICE AND APPLICATION TO TAKE UP AND DECIDE THE CVRA/MVRA PETITION FORTHWITH AND TO IDENTIFY ASSETS FOR RECOVERY UNDER THE MANDATORY VICTIMS' RESTITUTION ACT; MEMORANDUM OF POINTS AND AUTHORITIES contains 6711 words, as counted by the word-processing program used to prepare it, and therefore complies with the word limit of Local Rule 11-6.1.

DATED: August 31, 2026.

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

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

__X__ This filing USES generative artificial intelligence.

_____ This filing DOES NOT use generative artificial intelligence.

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

DATED: August 31, 2026,



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