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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 ANDRÉ BIROTTE JR., in his official capacity as a United States District Judge,

Respondents.

Case No. CV26-13079-AB

VICTIM'S EMERGENCY PETITION FOR ENFORCEMENT OF THE CRIME VICTIMS' RIGHTS ACT, 18 U.S.C. § 3771, FOR THE FAILURE TO TAKE UP AND DECIDE FORTHWITH THE VICTIM'S PENDING PETITIONS AND MOTIONS, AND FOR RELIEF UNDER THE MANDATORY VICTIMS' RESTITUTION ACT, 18 U.S.C. §§ 3663A AND 3664

[CRIME VICTIMS' RIGHTS ACT, 18 U.S.C. § 3771(d)(3) — TO BE DECIDED FORTHWITH]

[RESPONDENT JUDGE MAY NOT PRESIDE OR RECEIVE TRANSFER — 28 U.S.C. § 455(b)(5)(i), (e)]

[Notice of Related Cases Filed Concurrently]

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TO THE HONORABLE COURT, TO THE CLERK OF THE COURT, AND TO ALL PARTIES:

INTRODUCTION AND NATURE OF THE PETITION

Respondent Judge may not receive this Petition. Respondent André Birotte Jr. is a party to this proceeding. A judge "shall also disqualify himself" where he "[i]s a party to the proceeding," and the ground cannot be waived. 28 U.S.C. § 455(b)(5)(i), (e). Petitioner respectfully requests that this Petition not be transferred to Respondent Judge under General Order 08-05, § 5.2, or otherwise, and that any related-case determination be made by the Chief Judge. The identical ground required the prior judge's recusal from No. 2:26-cv-05207 fifty minutes after it was entered on the docket. (No. 2:26-cv-05207, Dkts. 47, 49; Ex. EE; Section II, *infra*.)

A badge does not make a fabricated federal court ruling lawful. On November 4, 2026, Respondent Judge reviewed "the entire docket" of Petitioner's closed 2017 civil case, found Petitioner among the "victims of the criminal counterfeiting," and held that he would deny relief "[e]ven accepting Plaintiff's late-presented allegations of fraud on the court as true." (No. 2:17-cv-07748, Dkt. 58 at 1–3, Page ID #:1466–1468; Ex. HH.) The fraud he accepted is this.

First, the agent. In March 2015, DHS Supervisory Special Agent Shawn S. Gibson of Homeland Security Investigations, Kansas City, met with Petitioner in Burbank, identified Greenway as a victim of Operation Software Slashers, told him that more than $20 million had been recovered, and told him he "may be able to recover from an established victims' fund." (No. 2:17-cv-07748, Dkt. 13 at 2, Page ID #:210; No. 2:26-cv-09383, Dkt. 60, Ex. C, Page ID #:2062; Ex. RR.) The Government later announced that investigators had "seized more than $20.6 million in assets." (Section X.A, *infra*.) In October 2016, the same agent fabricated a non-existent federal court ruling in favor of the primary bad actor in question, and against the victim's company as it specifically relates to its civil trademark

infringement claims. No court ever did. The only court to rule on the victim's trademark-infringement claims ruled the other way: it rejected the primary bad actor's challenge, wrote: "The Court disagrees," and allowed the victim's trademark claims to proceed against him. On the strength of a ruling that does not exist, DHS suspended the investigation as to the victim, and a Mexican-American grandfather lost every right the Crime Victims' Rights Act gave him and the restitution the Mandatory Victims Restitution Act made mandatory. (Ex. I; Ex. BB at 41–45.)

Then, the Office. The United States Attorney's Office never corrected the ruling. It carried it into this Court in 2018 and recast it in 2021. Confronted under oath, it did not deny it; it argued that, "assuming arguendo" a fraud on the court existed, "it would not 'affect the outcome of the case.'" (No. 2:17-cv-07748, Dkt. 23 at 5, Page ID #:753.) In August 2026, in the criminal case against the victim's nephew, it told the Chief Judge that the victim's claims had been "repeatedly rejected," in the same filing in which it conceded that "the government does not address them here in substance." (*United States v. McCormick*, No. 2:20-cr-00346(B)-DMG, Dkt. 864 at 4–5, Page ID #:11427–11428; Ex. AA.) The victim was not a party to that case and could not respond. No court has ever rejected those allegations. No court has ever examined them.

Then, the first judge. The prior judge held in 2018 that the Court lacked subject-matter jurisdiction over a civil-rights action under 42 U.S.C. § 1983 and the Federal Tort Claims Act that never touched the Crime Victims' Rights Act. (No. 2:17-cv-07748, Dkt. 13 at 9–13, Page ID #:217–221.) In 2021, he reached back to that dismissal to bar the victim's first crime-victim petition, and called the Western District of Missouri prosecution that his own 2018 Order had recited "speculation pulled from the ether." (No. 2:21-cv-01910, Dkt. 10 at 1–2, Page ID #:293–294.) When the victim named him a Respondent, he recused. (No. 2:26-cv-05207, Dkts. 47, 49.)

Then, the second judge, only worse. Respondent Judge received the same record with more knowledge, not less. He accepted the fraud as true and held that it would not change the outcome, the position the Office took in 2021. He denied the victim's motion as untimely, a defense no party raised and that Rule 60(d)(3) does not permit. Fed. R. Civ. P. 60(c)(1), (d)(3); *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944). He measured a federally identified crime victim by a 2017 civil case, and his order does not once mention the Crime Victims' Rights Act, the Mandatory Victims Restitution Act, or restitution. (Ex. HH at 2–4, Page ID #:1467–1469.) But the outcome is the restitution Congress made mandatory. 18 U.S.C. §§ 3663A(a)(1), (c)(1)(A)(ii), 3771(a)(6). The prior judge stepped aside fifty minutes after the application setting out this record was entered on the docket. Respondent Judge held that same application fifty-six days and denied it as moot. (No. 2:26-cv-05207, Dkts. 47, 49, 53; Section VI.B, *infra*.)

In that same order, on that same day, Respondent Judge decided four of the victim's motions without opposition and without a hearing, struck six of the victim's notices as "repetitive and unduly burdensome," and warned that the victim's filings "in his related cases" may be stricken. (Ex. HH at 3 & n.2, 4, Page ID #:1468–1469.) The related cases are the two petitions in which that same victim asks to be heard under the Crime Victims' Rights Act. Respondent Judge has held one of them for seventy-two days and the other for fifty-three. He has decided neither. He has not decided a single motion asserting a victim's right in either. He has not ordered the United States, which has been served in both and has appeared in neither, to say a word. Congress commanded that "[t]he district court shall take up and decide any motion asserting a victim's right forthwith." 18 U.S.C. § 3771(d)(3). The Court found a day to decide the case in which the victim had no right to a decision forthwith. It has not found one for the two cases in which he does.

Step back, and the record reads in a single line. A federal agent fabricated a court ruling. The Office obligated to correct it carried it into this Court instead.

Confronted under oath, the Office did not deny it; it said it would not matter. A judge who had held that he lacked jurisdiction treated that dismissal as a bar to rights no court had ever addressed, and recused only when named. His successor accepted the fraud as true, held that it would not matter, required nothing of the Office that produced it, and struck the victim's filings. Not one of them had any role in the prosecution in which those rights arose. Respondent Judge left the victim precisely where the fabrication put him: with no ruling, no restitution, no protection, and no answer from the Government. This Petition asks the Court to end that.

The violations, in brief. Each of the following is established by the dockets of Respondent Judge's own cases, and each denies a right Congress named:

- **No decision, forthwith or otherwise.** Both crime-victim petitions, and every motion asserting a victim's right filed in them, remain undecided: No. 2:26-cv-05207 for 176 days in all and seventy-two under Respondent Judge; No. 2:26-cv-09383 for fifty-three days since he transferred it to himself. 18 U.S.C. § 3771(d)(3), (a)(7). (Sections IV.C, V.)
- **No duty to ensure.** He has not directed the United States to appear, respond, or state a position in either case, and has left in place every inherited strike and an order to show cause the victim answered seventy-seven days ago. § 3771(b)(1). (Sections IV.D, V.A.)
- **The victim struck; the Government excused.** He struck six notices of newly discovered facts as "excessive," each reporting the Government's silence and each preceded by written notice to the Office under Local Rule 7-3 and his own Standing Order, with a deadline the Office let pass, while requiring nothing of an Office that has filed nothing in three cases. § 3771(a)(4), (a)(5), (a)(8). (Sections VII, IX.)
- **A defense no party raised.** He denied the fraud-on-the-court motion as untimely, a ground the Government, having filed nothing, never asserted, and

rested on merits rulings that a court holding it had no jurisdiction had no power to make. § 3771(a)(4), (a)(8). (Sections IV.A, V.C, XI.E.)

- **No protection.** The victim's application for reasonable protection from a documented criminal enterprise has sat undecided since September 14, 2026, after being struck twice under the local rules. § 3771(a)(1). (Section XII.)
- **No restitution.** No order addresses the Mandatory Victims Restitution Act, the § 3664(d)(5) petition, or the seized assets placed before him on September 1, 2026, although restitution for an offense committed by fraud or deceit is mandatory. § 3771(a)(6); 18 U.S.C. § 3663A(c)(1)(A)(ii). (Sections IV.B, XIV, XV.)
- **The misconduct record, struck.** The State Bar complaints, the Inspector General complaint, and the Government's uncorrected statements about the victim were placed before him on October 29 and November 2, 2026. He struck them in one case and has not addressed them in the other. § 3771(a)(8), (c)(1). (Sections IX.C–E, VI.)
- **Five times in fifteen days.** The record of the fabrication and of the Office's non-denial, placed before the prior judge five times over seven months in 2021, was placed before Respondent Judge five times in fifteen days in No. 2:17-cv-07748, and six more times in No. 2:26-cv-09383, each preceded by written notice to the Office, none answered. He denied one as futile and struck the other four; the six in No. 2:26-cv-09383 remain unaddressed. § 3771(a)(4), (a)(8), (b)(1). (Section VI.B.)
- **A threat to strike the victim's crime-victim filings.** In the 2017 action, he held that the victim's proof of fraud on the court, "accept[ed] … as true," could not overcome the 2018 dismissal, the same position the Office took in 2021 when it argued the fraud "would not 'affect the outcome of the case,'" and in the same order warned that filings "in his related cases," the crime-

victim petitions, "may be stricken." § 3771(a)(4), (a)(8), (b)(1). (Ex. HH at 3 & n.2; No. 2:17-cv-07748, Dkt. 23 at 5, Page ID #:753.)

- **A service defense supplied for the Government.** He held the victim to Rule 4 service and the threat of dismissal for a party that disclaimed service and never raised the defense in court, and after it was served again at its own request, required it to do nothing. § 3771(a)(4), (a)(8), (b)(1). (Section VIII.)
- **No related-case determination.** The referral to the Chief Judge that General Order 08-05, § 5.2 requires has never been made, though requested since May 14, 2026. (Section XIII.)

The parties and the offenses. Petitioner Gustavo Escamilla is an adult residing within the Central District of California, and is the primary owner, formulator, and developer of the products of his company, Greenway Nutrients, Inc. ("Greenway"). Petitioner and Greenway were directly and proximately harmed by, and are the victims of, federal crimes committed by David Dragan Selakovic, Steven Blackburn, and corporate entities controlled by them (collectively, the "Selakovic Defendants").

The offenses committed against Petitioner, including counterfeit-trademark trafficking, wire fraud under 18 U.S.C. § 1343, and related offenses, were investigated by the United States Department of Homeland Security and prosecuted by the United States Department of Justice in the Western District of Missouri, in *United States v. Ross*, No. 4:15-cr-00196-DGK, as part of the federal criminal enforcement action known as Operation Software Slashers. Petitioner's status as the federally identified Lead Victim of that operation arises from that prosecution. (Ex. BB at 7–9.)

The jurisdictional defect. Every ruling that has stood between Petitioner and his rights rests on one jurisdictional defect, and no court has ever examined it. Federal Rule of Criminal Procedure 18 fixed the Operation Software Slashers prosecution in the Western District of Missouri. No judge of this District presided

over it, entered an order in it, or had authority to determine the rights of the victims it named. In 2018, this Court dismissed Petitioner's civil-rights action under 42 U.S.C. § 1983 and the Federal Tort Claims Act for lack of subject-matter jurisdiction. (No. 2:17-cv-07748, Dkt. 13; Ex. M.) In 2021, the Court dismissed Petitioner's first crime-victim petition by reaching back to that jurisdictional dismissal, and, in the same order, declared the Western District of Missouri prosecution "speculation pulled from the ether." (No. 2:21-cv-01910, Dkt. 10 at 1–2, Page ID #:293–294; Ex. N.) A court without jurisdiction may only "announc[e] the fact and dismiss[] the cause." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998). A jurisdictional dismissal is not an adjudication on the merits, and it cannot preclude the merits of anything. *See Costello v. United States*, 365 U.S. 265, 285 (1961); Fed. R. Civ. P. 41(b) (dismissal for lack of jurisdiction does not operate as an adjudication on the merits).

Crime victims' rights have never been decided. Petitioner's 2017 action was a civil-rights suit against DHS and its agents under 42 U.S.C. § 1983 and the Federal Tort Claims Act. It asserted no right under the Crime Victims' Rights Act, and it was dismissed for lack of jurisdiction. (No. 2:17-cv-07748, Dkts. 1, 13.) The Crime Victims' Rights Act is a different statute, asserted by motion under 18 U.S.C. § 3771(d)(3), with its own grant of authority, its own command of decision forthwith, and its own remedies, including restitution that the Mandatory Victims Restitution Act makes mandatory. One has nothing to do with the other. No court has ever decided Petitioner's rights under the Act. The Government was told so in writing, twice, and answered neither time. On August 16, 2026, Petitioner wrote to AUSA Daniel A. Beck that the 2017 proceedings arose under "an entirely different statutory framework (42 U.S.C. §1983, and the Federal Tort Claims Act)." (No. 2:26-cv-05207, Dkt. 44 at 22, Page ID #:1144.) On September 14, 2026, he wrote to AUSA Alarice M. Medrano that he "has filed no civil lawsuit for damages against the United States, or against any agency, department, officer, or agent"; that "a

jurisdictional dismissal decides nothing"; and that the Government's duty "is not now, nor has it ever been, conditioned on the successful outcome of any civil litigation." (No. 2:26-cv-09383, Dkt. 24, Ex. C, Page ID #:1066–1078.) Both letters are on Respondent Judge's dockets. Yet on November 4, 2026, he measured the victim by the 2017 civil case: he applied its Rule 12(b)(6) rulings, described it as a case in which "Plaintiff was dissatisfied with how the Defendants' agents handled the case," and, while accepting the victim's allegations that the 2018 judgment was procured by fabricated evidence "as true," warned that filings "in his related cases," the crime-victim petitions, may be stricken. (Ex. HH at 2–3 & n.2, Page ID #:1467–1468.) The conflation is the error. It is the same error that has stood between Petitioner and his rights since 2021.

Petitioner has two crime-victim petitions pending before Respondent Judge: No. 2:26-cv-05207-AB, filed May 14, 2026, and on Respondent Judge's calendar since August 26, 2026; and No. 2:26-cv-09383-AB, filed August 21, 2026, and on Respondent Judge's calendar by his own signed transfer order since September 14, 2026. As of the filing of this Petition, Respondent Judge has not taken up or decided either petition, or any of the motions asserting a victim's right filed in them. He has not directed the United States to respond. The United States has not appeared in either case. In No. 2:26-cv-05207, an order to show cause threatening dismissal remains undischarged seventy-seven days after Petitioner answered it.

This Petition asks the Court to enforce the forthwith command. It seeks no damages. It seeks no relief against Respondent Judge personally. It asks for the prospective and declaratory relief the Crime Victims' Rights Act provides, against the officer whose duty it is to provide it, and against the United States, which has been served repeatedly and has never appeared.

This Petition is a new and independent assertion of rights. It arises from conduct that occurred after August 26, 2026, which no prior petition could have raised. Petitioner incorporates by reference, under Federal Rule of Civil Procedure

10(c), his August 21, 2026 Petition in No. 2:26-cv-09383 (Dkt. 1; Ex. BB) and the Exhibits A through AA filed in support of it (No. 2:26-cv-09383, Dkt. 2), which are of record; legible copies of Exhibits A through U are also of record at No. 2:26-cv-05207, Dkt. 9. Exhibits D, J, K, M, and N are filed concurrently with this Petition in its Notice of Filing of Exhibits; the remaining exhibits are cited, not reattached. Fed. R. Evid. 201(b). New Exhibits BB through RR are described in the Notice of Filing of Exhibits.

I. PARTIES, JURISDICTION, AND VENUE

Petitioner. Gustavo Escamilla resides in Glendale, California, within this District. He is the principal of Greenway Nutrients, Inc., which the Department of Homeland Security identified in March 2015 as a Lead Victim of Operation Software Slashers, a criminal counterfeiting investigation prosecuted in the Western District of Missouri. (Ex. BB at 7–11, 27–30.) He is a "crime victim" within the meaning of 18 U.S.C. § 3771(e)(2)(A). (*Id.* at 27–41.)

Respondent United States of America. The United States, acting through the Department of Justice and the United States Attorney's Office for the Central District of California ("USAO-CDCA" or "the Office"), is the real party in interest. Section 3771(c)(1) requires officers and employees of the Department of Justice "engaged in the detection, investigation, or prosecution of crime" to make their best efforts to see that crime victims are notified of, and accorded, their rights.

Respondent United States Department of Justice. The Department is named because § 3771(c)(1) and (f) impose duties on it directly.

Respondent André Birotte Jr. Respondent Judge is a United States District Judge of this District. He is named in his official capacity only, as the judicial officer on whom § 3771(b)(1) and (d)(3) impose the duty to ensure that Petitioner is afforded his rights and to take up and decide his motions forthwith in Nos. 2:26-cv-05207 and 2:26-cv-09383. No damages, fees, or personal relief are sought against him. *See* 18 U.S.C. § 3771(d)(6).

Jurisdiction. This Court has jurisdiction under 18 U.S.C. § 3771(d)(3), which provides that a victim's rights "shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred," and that "[t]he district court shall take up and decide any motion asserting a victim's right forthwith." The word "shall" is mandatory. *See Kenna v. U.S. Dist. Court for C.D. Cal.*, 435 F.3d 1011, 1018 (9th Cir. 2006) (calling the court of appeals' own failure to meet § 3771(d)(3)'s deadline an "inexcusable delay"). Jurisdiction further arises under the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3663A and 3664, including § 3664(d)(5).

The federal prosecution underlying Petitioner's victim status, Operation Software Slashers, was investigated and prosecuted in the Western District of Missouri, where Federal Rule of Criminal Procedure 18 fixed it. Fed. R. Crim. P. 18 (prosecution of a federal offense "in a district where the offense was committed"). No judge of this District had a presiding role in that prosecution, any involvement in it, or entered any order in it. No judge of this District had authority to rule on Petitioner's rights, status, or restitution arising from that prosecution, in any way, in any capacity. Those questions have never been decided. (Ex. BB at 8–9.)

The predicate federal offenses against Petitioner and Greenway, including trademark counterfeiting, wire fraud under 18 U.S.C. § 1343, securities and commodities fraud under 18 U.S.C. § 1348, embezzlement, and theft of trade secrets under 18 U.S.C. § 1832, caused harm within the Central District of California, where Petitioner resides and Greenway is located. (Ex. BB at 9, 35–37.)

Controlling Ninth Circuit authority, decided after the prior proceedings, confirms both this Court's jurisdiction and Petitioner's independent entitlement to mandatory restitution relief. In *In re Davis*, Nos. 24-3090 & 24-3092, 146 F.4th 710 (9th Cir. 2025) (as amended Aug. 1, 2025), the Ninth Circuit held that § 3771(d)(3)'s "no prosecution is underway" clause authorizes crime victims to assert their

rights after a prosecution has concluded, in the district where the crime occurred; that the word "any" in § 3771(d)(3) is "broad and all-encompassing"; that a petition under 18 U.S.C. § 3664(d)(5) is "any motion asserting a victim's right"; and that § 3771(d)(5)'s procedural limitations do not bar such petitions. *Davis* was decided June 2, 2025. It was not available at the time of any prior proceeding in this matter.

The Mandatory Victims Restitution Act supplies the substantive obligation this jurisdiction enforces. Because the offenses committed against Petitioner's company, Greenway, are offenses committed by fraud or deceit within the meaning of 18 U.S.C. § 3663A(c)(1)(A)(ii), restitution was mandatory, not discretionary; 18 U.S.C. § 3664(d)(1) imposed a mandatory duty on the government to consult the identified victim before any restitution determination; and 18 U.S.C. § 3664(g)(1) provides that "[n]o victim shall be required to participate in any phase of a restitution order," codifying Petitioner's entitlement to rely on the government to discharge the restitution process on his behalf. Neither the mandatory-restitution obligation nor the mandatory consultation duty was ever discharged as to Petitioner. (Ex. BB at 10–11.) This Court has jurisdiction under § 3771(d)(3) to enforce those unfulfilled obligations forthwith.

Venue. The harm caused by the offenses fell in this District, where Petitioner resides and Greenway is located. (Ex. BB at 9–11.) The conduct on which this Petition is based—the failure to take up and decide Petitioner's motions, and the Government's failure to appear—occurred in this District, in this Courthouse.

II. RESPONDENT JUDGE MAY NOT PRESIDE OVER THIS PETITION OR RECEIVE IT BY TRANSFER

A judge "shall … disqualify himself" where he "[i]s a party to the proceeding." 28 U.S.C. § 455(b)(5)(i). The disqualification is mandatory, and no party may waive it. *Id.* § 455(e). Respondent Judge is a party to this proceeding. He may not preside over it, and he may not take any action in it beyond the ministerial act of transferring it to another judge. No man may be a judge in his own cause. *In re*

Murchison, 349 U.S. 133, 136 (1955); *see Williams v. Pennsylvania*, 579 U.S. 1 (2016).

Petitioner is filing a Notice of Related Cases under Local Rule 83-1.3, as he must, identifying Nos. 2:26-cv-05207, 2:26-cv-09383, 2:17-cv-07748, and *United States v. McCormick*, No. 2:20-cr-00346(B)-DMG. Petitioner respectfully requests that the Clerk not route this Petition to Respondent Judge under General Order 08-05, § 5.2, or under any related-case procedure. Where a case is related to cases before a judge who is a respondent in it, the transfer procedure cannot send it to that judge. Petitioner requests that any related-case determination be made by the Chief Judge, before whom *United States v. McCormick* is pending.

This is not a novel request. It is what happened the last two times Petitioner named a judge of this Court. On August 21, 2026, Petitioner filed No. 2:26-cv-09383 naming Judge Otis D. Wright, II, in his official capacity. Five days later, fifty minutes after Petitioner's application to disqualify him was entered on the docket, Judge Wright recused himself from No. 2:26-cv-05207. (No. 2:26-cv-05207, Dkts. 47, 49; Ex. EE.) On September 30, 2026, Petitioner moved to disqualify Judge Wright in No. 2:17-cv-07748 on the ground that he was a party to a related proceeding. (No. 2:17-cv-07748, Dkt. 26.) Judge Wright recused himself the next day. (No. 2:17-cv-07748, Dkt. 30.)

Concurrently with this Petition, Petitioner is filing an Emergency Notice of Mandatory Disqualification under 28 U.S.C. §§ 455(a) and 455(b)(5)(i) and the Due Process Clause in each of Nos. 2:26-cv-05207 and 2:26-cv-09383. Those Notices are not before this Court. This Petition does not depend on their outcome.

III. JUDICIAL IMMUNITY DOES NOT BAR THIS PETITION

This Petition seeks no damages, and that single fact resolves the immunity question before it is asked. Judicial immunity is, and has always been, a defense to suits for money damages against a judge in his personal capacity. It exists so that judges may decide cases "without apprehension of personal consequences."

Mireles v. Waco, 502 U.S. 9, 10 (1991). Where no personal consequence is sought, the doctrine has nothing to protect. Petitioner seeks no award against Respondent Judge, no sum payable by him, and no finding of liability against him. He seeks a declaration of what the Crime Victims' Rights Act requires, and an order that its requirements be honored going forward. *Pulliam v. Allen*, 466 U.S. 522, 541–42 (1984) (judicial immunity is no bar to prospective relief against a judicial officer acting in a judicial capacity). The inquiry can begin and end there.

This is not a suit against a judge for damages in any way. It is a self-executing statutory victims' rights enforcement action seeking declaratory relief, in which the Crime Victims' Rights Act itself designates the district court as the tribunal to act and the court of appeals as the body to compel it. The Act commands that a victim's motion be asserted "in the district court," that the court "take up and decide" it "forthwith," and that "[i]f the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus." 18 U.S.C. § 3771(d)(3). It expressly forecloses "a cause of action for damages." *Id.* § 3771(d)(6). That is how the Ninth Circuit proceeded in *Kenna*, 435 F.3d at 1013, 1017, where the district court itself was the named respondent and was directed to accord the victim his rights, with no immunity question raised or possible.

This Petition does not seek to punish a judge for a ruling. It does not seek damages, costs, or fees against him. It asks that a statute be enforced: that a federally identified crime victim be accorded, prospectively, the rights Congress made mandatory, by the officer to whom Congress assigned that duty. A declaration that those rights survive imposes no liability on anyone. It vindicates an Act of Congress; it does not sanction the officer who overlooked it. Petitioner incorporates the immunity analysis of his August 21, 2026 Petition. (Ex. BB at 11–14.)

IV. THE GROUNDS FOR RELIEF

This Petition is brought on multiple independent grounds, each of which is sufficient alone to warrant this Court's forthwith adjudication under 18 U.S.C. § 3771(d)(3).

A. The First Ground — The Jurisdictional Defect Has Never Been Examined, and Respondent Judge Has Carried It Forward

The defect does not require argument. It requires a review of two orders of this Court, read one after the other.

2018: the Court recorded the prosecution as fact. In its April 4, 2018 Order, the Court set down, from the record before it, that Petitioner met with DHS Operations Manager Shawn Gibson on March 3, 2015, and that:

> "Gibson explained to Plaintiffs that the Greenway investor defendants . . . had already been subject to extensive investigation for criminal trademark infringement. . . . [A]s of the meeting date, ICE and the United States Attorney's Office had recovered over $26 million in the investigation. He also informed Plaintiffs that they may be able to recover from an established victims' fund. . . . [T]he Kansas City U.S. Attorney's Office for the Western District of Missouri ('USAO-MO') agreed that Greenway would be added as a victim in the government's case . . . ." (No. 2:17-cv-07748, Dkt. 13 at 2–3, Page ID #:210–211; Ex. M.)

Those recitals were not Petitioner's characterizations. The Court drew them from the Government's own motion, which told the Court that "Gibson explained that ICE and USAO-MO had been investigating the Greenway investor defendants in the Colorado action for criminal trademark infringement." (No. 2:17-cv-07748, Dkt. 9 at 10, Page ID #:131.)

2021: the Court called the same prosecution a fiction. Three years later, on the same facts, the Court dismissed Petitioner's petition under the Crime Victims' Rights Act, holding:

> "The Complaint . . . fails to state a valid claim for relief under 18 U.S.C. § 3771 because it fails to (1) identify the existence of any criminal proceeding that would grant Plaintiff rights; or (2) allege facts suggesting that the underlying crimes occurred in this District. . . . [Petitioner's allegations] are merely speculation pulled from the ether and do nothing to cause the Court to reconsider its earlier determination that Plaintiffs have supplied no basis to establish any rights under the Crime Victims' Rights Act." (No. 2:21-cv-01910, Dkt. 10 at 1–2, Page ID #:293–294; Ex. N.)

The borrowed jurisdiction. That dismissal did not reach a single victim's-rights question. It reached back to 2018 and reaffirmed a jurisdictional ruling in a § 1983 and Federal Tort Claims Act case, an order it cited by the wrong case number, "17-cv-07747." (No. 2:21-cv-01910, Dkt. 10, Page ID #:293–295.) There had been no "earlier determination" on the Crime Victims' Rights Act; none had ever been made. And the Court faulted Petitioner for failing to allege that the crimes "occurred in this District," when the Court's own 2018 Order had located the prosecution in the Western District of Missouri, where Rule 18 placed it and where it could proceed. (Ex. BB at 16–21.)

If the Court lacked jurisdiction, it lacked jurisdiction to make that finding. And if it could make that finding, it had jurisdiction, and was obligated to decide the victim's rights forthwith. It cannot be both. The order is the one thing a jurisdictional dismissal can never be: a merits determination entered by a court professing to have no power to enter one. *Steel Co.*, 523 U.S. at 94. That defect has never been raised, waived, or forfeited by Petitioner. It has never been examined by any court, at any stage. (Ex. BB at 21–22.)

2026: Respondent Judge carried the defect forward. The defect was placed before Respondent Judge in every case he holds. (No. 2:26-cv-05207, Dkt. 47 at 28–31, Page ID #:1220–1223; No. 2:26-cv-09383, Dkt. 1 at 16–22; No. 2:17-cv-07748, Dkt. 28 at 6, 40–43, Page ID #:814, #:848–851; *id.*, Dkt. 54.) On November 4, 2026, he did not examine it. He treated the 2018 Order as a valid

adjudication that also "determined that Plaintiff failed to state any of these claims," and concluded, "on the Court's own consideration," that nothing Petitioner presented could "overcome the grounds on which Judge Wright dismissed the case with prejudice." (Ex. HH at 2–3, Page ID #:1467–1468.) The Government has used the same jurisdictional judgment, and the 2021 order that borrowed it, to tell another judge of this Court that Petitioner's claims have been "repeatedly rejected." (*United States v. McCormick*, No. 2:20-CR-00346(B)-DMG, ECF No. 864 at 4–5, Page ID #:11427–11428; Ex. AA.) Meanwhile the two petitions in which Congress directed that Petitioner's rights be taken up and decided forthwith remain undecided before Respondent Judge.

What a court without jurisdiction may do. The governing rule comes from the Supreme Court, and it is not qualified. "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co.*, 523 U.S. at 94 (quoting *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1869)). A court that pronounces on the merits of a claim it has no jurisdiction to hear acts "ultra vires." *Id.* at 101–02. Jurisdiction is a threshold that must be established before any ruling on the merits. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999). A dismissal for lack of jurisdiction is not an adjudication on the merits and precludes nothing on the merits. *Costello*, 365 U.S. at 285; Fed. R. Civ. P. 41(b). And because it decides nothing on the merits, it must be entered without prejudice. *Kelly v. Fleetwood Enters., Inc.*, 377 F.3d 1034, 1036 (9th Cir. 2004).

The April 4, 2018 Order held that the Court lacked subject-matter jurisdiction over every claim in the 2017 action. (No. 2:17-cv-07748, Dkt. 13 at 9–13, Page ID #:217–221.) Under *Steel Co.*, that was the end of the Court's power over those claims. Its additional Rule 12(b)(6) rulings, its finding of "futility," and its "with prejudice" label were rulings on the merits by a court that had just held it had no

power to make them. (*Id.* at 13–21, Page ID #:221–229.) Under *Costello*, none of them can bar anything. The April 2, 2021 Order then borrowed that jurisdictional judgment to dismiss Petitioner's crime-victim petition and to find his account of the Western District of Missouri prosecution "speculation pulled from the ether." (No. 2:21-cv-01910, Dkt. 10 at 1–2, Page ID #:293–294.) Petitioner showed in August 2026 that the 2021 Order had done exactly what *Steel Co.* forbids: "a court that declared it had no power to decide, then decided anyway — against the victim." (No. 2:26-cv-05207, Dkt. 47 at 29–31, Page ID #:1221–1223.) That showing was in Respondent Judge's hands when he decided that application. (Dkt. 53.)

Respondent Judge did the same thing, three times, in one order. On November 4, 2026, Respondent Judge had jurisdiction to decide whether the 2018 judgment was procured by fraud on the court. He did not have the power, any more than the 2018 Court did, to adjudicate the merits of claims the Court had held it lacked jurisdiction to hear. He did so anyway:

> First, he treated the 2018 merits rulings as valid: "The Order also determined that Plaintiff failed to state any of these claims and dismissed them on that basis pursuant to Fed R. Civ. P. 12(b)(6)." (Ex. HH at 2, Page ID #:1467.)
>
> Second, he measured Petitioner's motion against those merits rulings: Petitioner did not explain "how these allegations shore up any of his claims so as to overcome Rule 12(b)(6)," and "on the Court's own consideration of this question, the Court concludes that none of the material presented in the Motion could overcome the grounds on which Judge Wright dismissed the case with prejudice." (*Id.* at 3, Page ID #:1468.)
>
> Third, he denied the Application to File Supplemental Facts as "futile" because Petitioner did not explain how the new matters "can adequately plead his claims to overcome Rule 12(b)(6)," adding: "Nor does the Court see how these obstacles can be overcome." (*Id.* at 3–4, Page ID #:1468–1469.)

Each of those is a ruling on whether claims the Court had no jurisdiction to hear could state a claim on the merits. Each treats as binding a "with prejudice" dismissal that a jurisdictional ruling cannot carry. And each was made on the Court's own initiative, on a ground the Government, which filed nothing, never raised. *See Day v. McDonough*, 547 U.S. 198, 210 (2006); *Greenlaw v. United States*, 554 U.S. 237, 243 (2008).

The jurisdictional finding was itself the product of the fabrication. Respondent Judge reasoned that fraud on the court could not "overcome this Court's lack of subject matter jurisdiction." (Ex. HH at 3.) But the motion before him showed that the 2018 jurisdictional findings rested on the very acts it documented. The discretionary-function ruling rested 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." (No. 2:17-cv-07748, Dkt. 13 at 13, Page ID #:221.) The exhaustion ruling rested on the Ramey declaration: "ICE asserts by affidavit that there is no record of a formal complaint." (*Id.* at 11, Page ID #:219.) The Rule 12(b)(6) rulings rested on the Park declaration. (*Id.* at 16 n.6, Page ID #:224.) As the motion put it, "[a] jurisdictional finding procured by fabricated jurisdictional evidence is the product of the fraud." (*Id.*, Dkt. 28 at 33–34, Page ID #:841–842.) Respondent Judge did not address that showing. He accepted the fraud "as true" and then relied on the findings it produced.

Fraud accepted as true vitiates what it produced. "Fraud destroys the validity of every thing into which it enters." *Nudd v. Burrows*, 91 U.S. 426, 440 (1875); *see United States v. Throckmorton*, 98 U.S. 61, 64 (1878) ("fraud vitiates the most solemn contracts, documents, and even judgments"). Respondent Judge did not find the fraud unproven. He accepted it "as true." (Ex. HH at 3, Page ID #:1468.) A fraud accepted as true cannot be confined to the facts it touched. It reaches every ruling that rested on it, and the motion before him showed that the jurisdictional, discretionary-function, exhaustion, and Rule 12(b)(6) rulings each

did. A court without jurisdiction had no power to reach the merits at all. *Steel Co.*, 523 U.S. at 94. A ruling made without that power is "a legal nullity," *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010), and a dismissal for want of jurisdiction carries no preclusive effect on the merits, *Costello*, 365 U.S. at 285; Fed. R. Civ. P. 41(b). Respondent Judge thus gave binding effect against a federally identified crime victim to merits rulings that were void for want of power and, on his own acceptance, procured by fraud. Each premise compounds the other: a nullity is not revived because a fraud produced it, and a fraud accepted as true is not left standing because it produced a nullity.

Each act denied a right the statute names. Treating merits rulings made without jurisdiction as binding against the victim, and applying them on the Court's own initiative where the Government raised nothing, denied Petitioner the right to be treated with fairness and with respect for his dignity, 18 U.S.C. § 3771(a)(8). Disposing of his showing on that basis, without a hearing and after vacating the one he had noticed, denied him the right to be reasonably heard, § 3771(a)(4). Leaving in place, as a bar against him, a judgment that forecloses the restitution the Government told him in 2015 he would receive denied him the right to full and timely restitution as provided in law, § 3771(a)(6). And because Respondent Judge had found him a victim in the same order, each was a failure of the duty to ensure that the victim is afforded his rights, § 3771(b)(1). The prior judge did the same in 2021, and Petitioner showed it to Respondent Judge in August. (No. 2:26-cv-05207, Dkt. 47 at 29–31, Page ID #:1221–1223.) Respondent Judge repeated it in November.

The crime-victim petitions are different. In Nos. 2:26-cv-05207 and 2:26-cv-09383, the Court's jurisdiction does not depend on the 2017 action at all. It rests on 18 U.S.C. § 3771(d)(3) and the Mandatory Victims Restitution Act, as *Davis* construes them. (Section I, *supra*.) There, Respondent Judge has the power the 2018 Court lacked, and the statute commands him to use it forthwith. He has not. The

result is a court that reached the merits where it had no jurisdiction, and has not reached them where Congress commanded it to. Petitioner seeks no damages. He seeks no vacatur of any prior order. He challenges no charging decision. *See* 18 U.S.C. § 3771(d)(6).

B. The Second Ground — Independent Entitlement to Restitution Under 18 U.S.C. § 3664(d)(5) and In re Davis

The distinction matters. Petitioner's two crime-victim petitions are not civil-rights actions. They are petitions for mandatory restitution under the Mandatory Victims Restitution Act, 18 U.S.C. §§ 3663A and 3664(d)(5), asserted through § 3771(d)(3) as *In re Davis*, 146 F.4th 710 (9th Cir. 2025) (as amended Aug. 1, 2025) holds. A § 3664(d)(5) petition asserts "the right to full and timely restitution as provided in law," § 3771(a)(6), and that right "incorporates the substantive right to restitution created by the Mandatory Victims Restitution Act." *Davis*, slip op. at 23 (citing *United States v. Kovall*, 857 F.3d 1060, 1070 (9th Cir. 2017)). The Act "confers standing on victims to seek restitution on their own behalf, rather than relegating them to bystander status while the government decides, for its own reasons and pursuant to its own strategy, whether, for whom, and in what amount to seek restitution." *Id.* at 24 (quoting *Fed. Ins. Co. v. United States*, 882 F.3d 348, 359 (2d Cir. 2018)). And an application for restitution is among the motions the district court must decide "forthwith." *Id.* (quoting *In re Doe*, 50 F.4th at 1250).

Davis also settles the considerations that govern delay in this context. The limitations on motions to reopen in § 3771(d)(5) do not apply to restitution petitions under § 3664(d)(5); in exempting them, "the Crime Victims' Rights Act elevated crime victims' rights above finality concerns in the restitution context." *Id.* at 28. The restitution scheme "seeks speed primarily to help the victims of crime and only secondarily to help the defendant." *Id.* (quoting *Dolan v. United States*, 560 U.S. 605, 613 (2010)). Because "[n]o victim shall be required to participate in any phase of a restitution order," § 3664(g)(1), "victims may rely on the government to assert

their rights to restitution," and an omission caused by the Government's errors "likely amounts to good cause." *Id.* at 32. The statute's time directives do not "deprive the court of the power to order restitution." *Id.* at 34 (quoting *Dolan*, 560 U.S. at 611). And the courts have "warned against reading § 3664(d)(5)'s requirements" to defeat restitution, which "would harm those—the victims of crime—who likely bear no responsibility." *Id.* at 33–34 (quoting *Dolan*, 560 U.S. at 613–14). A ruling that misreads these provisions is legal error, and mandamus issues "whenever" the district court's order "reflects an abuse of discretion or legal error." *Id.* at 35 (quoting *Kenna*, 435 F.3d at 1017).

Measured against *Davis*, the record is this. Respondent Judge has held Petitioner's restitution petition in No. 2:26-cv-05207 for seventy-two days and in No. 2:26-cv-09383 for fifty-three days without a ruling. When No. 2:26-cv-05207 was reassigned to him on August 26, 2026, upon the prior judge's recusal, the Petition had already been pending 104 days without a ruling. (No. 2:26-cv-05207, Dkts. 1, 49.) The statute's command was already overdue the day the case reached him, and he has known it from that day. The Petition has now been pending 176 days. Neither docket contains an order addressing the Mandatory Victims Restitution Act, § 3664(d)(5), the Government's errors that supply good cause, or the seized assets placed before him on September 1, 2026. (No. 2:26-cv-05207, Dkt. 50 at 34–37, Page ID #:1271–1274; Dkt. 51, Ex. C.) Meanwhile, in the civil-rights case, Respondent Judge measured Petitioner by finality: the motion came "[f]ive years later," Petitioner "was aware of these grounds long ago," and future "rule violations, whether in this case or in his related cases, may be stricken." (Ex. HH at 2–3 & n.2, Page ID #:1467–1468.) The related cases are restitution petitions, in which Congress placed the victim's rights above finality and made the Government's failures good cause. A victim who relied on the Government, as § 3664(g)(1) entitles him to do, and who was misinformed by it, cannot be measured by the passage of time the Government's own conduct produced.

The pre-*Davis* unavailability of this pathway forecloses any preclusion defense. Claim preclusion does not extinguish a claim where the plaintiff was "unable to rely on a certain theory of the case or to seek a certain remedy or form of relief in the first action." Restatement (Second) of Judgments § 26(1)(c) (1982). Issue preclusion does not bar relitigation where "[t]he 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." *Id.* § 28(2)(b). *Davis* is such a change. (Ex. BB at 22–23.) Petitioner seeks no damages. He seeks no vacatur of any prior order. He challenges no charging decision. *See* 18 U.S.C. § 3771(d)(6).

C. The Third Ground — Respondent Judge Has Not Taken Up and Decided Petitioner's Motions Forthwith (18 U.S.C. § 3771(d)(3), (a)(7))

Section 3771(d)(3) is mandatory. "The district court shall take up and decide any motion asserting a victim's right forthwith." Congress made the same point to the courts of appeals with a number: a mandamus petition must be decided "within 72 hours after the petition has been filed." *Id.* The Act "was designed to be a broad and encompassing statutory victims' bill of rights." *United States v. Degenhardt*, 405 F. Supp. 2d 1341, 1342 (D. Utah 2005) (quoting 150 Cong. Rec. S4261 (daily ed. Apr. 22, 2004) (statement of Sen. Feinstein)). "[T]he CVRA requires a district court to decide a motion asserting a victim's rights, including an application for restitution, 'forthwith.'" *In re Davis*, 146 F.4th 710 (9th Cir. 2025) (as amended Aug. 1, 2025), slip op. at 24 (quoting *In re Doe*, 50 F.4th 1247, 1250 (9th Cir. 2022)). "In no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter." 18 U.S.C. § 3771(d)(3). And on a victim's petition for mandamus, the Sixth Circuit held: "The unexplained, three-month passage of time without a ruling by the district court does not comply with the statute." *In re Simons*, 567 F.3d 800, 801 (6th Cir. 2009).

Each of the pending applications is a "motion asserting a victim's right." A petition to take up and decide, a petition to deem unopposed, an application for

reasonable protection under § 3771(a)(1), and an application to identify assets for restitution are, on their face, assertions of the rights in § 3771(a)(1), (2), (4), (5), (6), (7), and (8). And under *Davis*, a § 3664(d)(5) petition is itself "any motion asserting a victim's right." slip op. at 22–23. No. 2:26-cv-05207 has been pending without a ruling for 176 days. Whatever "forthwith" permits, it does not permit seventy-two days of silence on a petition, sixty-six days of silence on an application to decide it, and twenty-three days of silence on an ex parte application. An ex parte application is, by definition, a request for immediate relief.

The delay is also a violation of the substantive right to "proceedings free from unreasonable delay." 18 U.S.C. § 3771(a)(7). Delay that the statute forbids is unreasonable by definition, and delay with no stated reason cannot be found reasonable.

D. The Fourth Ground — Respondent Judge Found Petitioner a Victim, Inherited the Entire Docket, and Has Not Ensured a Single Right (18 U.S.C. § 3771(b)(1))

"In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a)." 18 U.S.C. § 3771(b)(1). A petition under § 3771(d)(3) is a court proceeding involving an offense against a crime victim; it exists for no other purpose. The duty to ensure is affirmative. It is not discharged by waiting for the Government to act, when the Government has been served repeatedly and has elected not to act.

Respondent Judge also knew, before he entered his only order in No. 2:26-cv-05207, exactly which of Petitioner's rights the prior judge had left unaccorded. The disqualification application he decided on October 21, 2026, set them out. (No. 2:26-cv-05207, Dkt. 47; Ex. KK.) It showed that the prior judge had struck Petitioner's applications to take up and decide the Petition forthwith and his Motion for Reasonable Protection, for "fail[ing] to cite any legal authority" that Local Rule 7-3 does not govern a motion under the Act, when that authority, 18 U.S.C. § 3771(d)(3) and Fed. R. Civ. P. 83(a)(1), appeared at pages 14 and 15 of the very

Notice the order cited. (*Id.* at 27–28, Page ID #:1219–1220.) It showed that the conferral the order demanded could not be had: "A victim cannot confer with a party that refuses to enter his case." (*Id.* at 28, Page ID #:1220.) It showed that the victim's rights "attach upon the government's notification of the investigation," "not by leave of a court with no role in it." (*Id.* at 9, Page ID #:1201.) And it described "a Court that has required nothing of that Government while striking his own filings." (*Id.* at 37, Page ID #:1229.) Respondent Judge denied the application as moot. (Dkt. 53; Ex. GG.) He did not revisit the strike orders. He did not take up the forthwith applications, the Motion for Reasonable Protection, or the Petition. He did not require anything of the Government. The denials of Petitioner's rights that the application documented under the prior judge have continued, unchanged, under Respondent Judge.

From August 26, 2026, the entire docket of No. 2:26-cv-05207 has been Respondent Judge's. Reassignment did not leave the prior judge's orders beyond his reach. Any order that adjudicates fewer than all the claims "may be revised at any time before the entry of a judgment." Fed. R. Civ. P. 54(b). The strike orders of August 14 and 18, 2026 (Dkts. 35, 43), the order to show cause that was answered and never discharged (Dkts. 36, 44), the unperformed § 5.2 referral (Dkts. 4, 26, 45, 46), the struck Motion for Reasonable Protection, and every application asserting a victim's right have stood on that docket, in his charge, every day since. He has let each of them stand. A successor judge who leaves in place every denial he inherited, and adds none of the relief the statute commands, has made those denials his own.

Respondent Judge's own findings removed any doubt about whether this duty applied to him. On November 4, 2026, after reviewing "the entire docket," he found that Petitioner and Greenway were "victims of the criminal counterfeiting," and that the 2017 action arose out of Operation Software Slashers, a criminal counterfeiting operation. (Ex. HH at 2, Page ID #:1467.) Petitioner's rights did not begin that day. They attached in March 2015, when DHS identified Greenway as a

Lead Victim, and they have never been accorded. (Ex. BB at 27–30.) What changed on November 4, 2026, is that the judge presiding over all three of Petitioner's cases recorded, in a signed order, that Petitioner is a victim of the very offenses on which his crime-victim petitions rest. From that day on, Respondent Judge could not treat Petitioner's status as an open question. The duty to "ensure that the crime victim is afforded the rights described in subsection (a)," § 3771(b)(1), applied with full force, and every day since without a ruling in Nos. 2:26-cv-05207 and 2:26-cv-09383 has been a failure to discharge it. The same finding forecloses the Government's position that "[i]t does not appear that you are an identified crime victim in a federal criminal proceeding." (Ex. BB at 26–27.)

The rights Respondent Judge has not ensured include the right to reasonable protection, § 3771(a)(1), sought since August 26, 2026; the right to be reasonably heard, § 3771(a)(4); the right to confer with the attorney for the Government, § 3771(a)(5), which cannot be exercised against an attorney who will not appear; and the right to full and timely restitution as provided in law, § 3771(a)(6).

E. The Fifth Ground — The Government Has Never Appeared, and Has Never Denied a Single Documented Act on the Merits (18 U.S.C. § 3771(c)(1), (a)(5))

Beginning in July 2021, attorneys of the Office, with notice of Agent Gibson's fabrication, did not correct it, did not distance themselves from it, and did not disclose it. They adopted, recast, and republished it. When Petitioner placed the documented acts before the Court in his Rule 60(d)(3) motion, the Government's October 25, 2021 opposition denied none of them on the merits. (Ex. J; Ex. BB at 24–25.) DHS's Office of Inspector General did not respond to Petitioner's June 2025 complaint documenting the fabrication. (Ex. BB at 23–24.) From December 2025 through February 2026, the Office's Victim-Witness staff, after confirming that the Office had "reviewed it and the attachments," told the formally identified Lead Victim that "[i]t does not appear that you are an identified crime victim in a

federal criminal proceeding. We cannot assist you." (Ex. BB at 25–26; No. 2:26-cv-05207, Dkt. 44 at 24, Page ID #:1146.)

Section 3771(c)(1) requires the Department's officers to make their best efforts to see that victims are notified of and accorded their rights. The Office has had written notice of Petitioner's claims since December 2025 and of his pending Petition since June 2, 2026. It has disclaimed service, ignored a request to confer, asked to be re-served, and characterized Petitioner's claims to Chief Judge Gee in a case to which he is not a party. It has not once appeared in a case in which Petitioner is a party. Each day of non-appearance since August 26, 2026, is a new failure of the best-efforts duty, and none of it could have been raised in any prior petition. Congress did not leave that duty to discretion. It directed the Attorney General to adopt regulations containing "disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who willfully or wantonly fail to comply with provisions of Federal law pertaining to the treatment of crime victims." 18 U.S.C. § 3771(f)(2)(C). Petitioner asks this Court to impose no sanction; that is for the Attorney General. He cites the provision for what it shows: Congress treated the duties the Office has left undischarged here as obligations whose willful breach warrants removal from federal service. The Department's own Guidelines, cited here as corroboration of what the statute already requires, describe the same duties. Department responsibilities to crime victims "begin as soon as possible after the detection of a crime," which is "[g]enerally . . . defined by the opening of a criminal investigation." Attorney General Guidelines for Victim and Witness Assistance, Art. III.B.4, at 13; Art. IV.C, at 48 (2022 ed.). The responsibility for identifying victims "continues with the investigative agency throughout the criminal justice process." *Id.* Art. IV.E, at 48. "A strong presumption exists in favor of providing, rather than withholding, assistance and services." *Id.* Art. II.A, at 4. Department lawyers must "inform crime victims of their rights and the statutory basis for those rights" and "meaningfully

consult with them at critical junctures of the case." *Id.* Art. II.H.1, at 9. Personnel "should immediately report articulable concerns about victim safety and reports of threats to the lead case agent." *Id.* Art. V.C commentary, at 58. And "[w]hen responding to motions," Department personnel "should consider a victim's right to fairness and to not unreasonably delay the proceedings." *Id.* Art. V.J.1, at 71. The right to fairness "is central to the purpose of the CVRA and should serve as a guiding principle for Department personnel that governs all interactions with crime victims." *Id.* Art. V.J, at 70. The Office has responded to none of Petitioner's motions. Petitioner incorporates the § 3771(c)(1) analysis of his August 21, 2026 Petition. (Ex. BB at 24–27, 59–68.)

Since August 26, 2026, the Office has been served in both crime-victim cases, has asked to be re-served in one, has received eleven written requests to confer or to state its position, and has not appeared, answered, opposed, or denied anything. (Section VIII, *infra*.) Petitioner seeks no damages. He seeks no vacatur of any prior order. He challenges no charging decision. *See* 18 U.S.C. § 3771(d)(6).

F. The Sixth Ground — Respondent Judge Has Denied the Victim Fairness (18 U.S.C. § 3771(a)(8))

Fairness under § 3771(a)(8) includes even-handed treatment of the victim and the Government. The record before Respondent Judge shows a victim whose filings have been struck, admonished, and warned against, and a Government that has been asked for nothing. In No. 2:17-cv-07748, Respondent Judge struck six of Petitioner's notices as unduly burdensome and warned that his filings in his related cases may be stricken. (Ex. HH at 3 n.2, 4.) In the related cases, he has required nothing of the Government, which has filed nothing. Petitioner described exactly this imbalance in August: "a Court that has required nothing of that Government while striking his own" filings. (No. 2:26-cv-05207, Dkt. 47 at 37, Page ID #:1229.) Respondent Judge ruled on that motion, and the imbalance continued.

Respondent Judge struck six of Petitioner's notices as "excessive," "repetitive and unduly burdensome." (Ex. HH at 4; No. 2:17-cv-07748, Dkt. 58.) Each was preceded by written notice to the Office, as Local Rule 7-3 and Paragraph 12(b) of Respondent Judge's Standing Order require, with a stated deadline for its position. (No. 2:17-cv-07748, Dkt. 44, Ex. A; Dkt. 47 at 21–22, Page ID #:1122–1123; Dkt. 52, Ex. A; Dkt. 54 at 18, Page ID #:1381; Dkt. 56, Ex. A.) The Office let every deadline pass. The notices requested "no ruling and no relief beyond what the pending motions already seek." (*E.g.*, Dkt. 56 at 6, Page ID #:1414.) They reported that silence, and they asked the Office to do only what the law already commands of it: to make its best efforts to accord the victim his rights, 18 U.S.C. § 3771(c)(1); to confer, *id.* § 3771(a)(5); and to report the allegations as 28 U.S.C. § 535(b), 28 C.F.R. §§ 45.11–45.12, and Justice Manual § 1-4.340 require. The Order identifies no rule the notices violated, and it does not mention the Office's silence.

The record shows the same sequence in 2021 and in 2026. In 2021, the presiding judge required no response from the Office, raised on his own motion a defense the Government never raised, and dismissed. (No. 2:21-cv-01910, Dkt. 10; No. 2:17-cv-07748, Dkt. 54, Ex. A at 2, Page ID #:1392.) On November 4, 2026, Respondent Judge required no response from the Office, held that "neither oppositions nor a hearing are necessary," and denied Petitioner's motion as untimely, a ground the Office never raised. (Ex. HH at 1, 3.) Before acting on its own initiative, a court "must accord the parties fair notice and an opportunity to present their positions." *Day v. McDonough*, 547 U.S. 198, 210 (2006); *see Greenlaw v. United States*, 554 U.S. 237, 243 (2008).

Petitioner placed before Respondent Judge reliable evidence of attorney misconduct, the Office's own non-denial of it, and the text of Canon 3B(6), which provides that a judge "should take appropriate action upon receipt of reliable information indicating the likelihood . . . that a lawyer violated applicable rules of professional conduct." (No. 2:17-cv-07748, Dkts. 40, 44, 52, 54, 56; No. 2:26-cv-

09383, Dkts. 44, 52, 54, 56, 58, 60; *see* No. 2:17-cv-07748, Dkt. 54 at 6, 16–18, Page ID #:1369, #:1379–1381; Dkt. 56 at 21–22, Page ID #:1429–1430.) He was shown the Court's power to act on its own: Fed. R. Civ. P. 11(c)(3); *Universal Oil Prods. Co. v. Root Ref. Co.*, 328 U.S. 575, 580 (1946); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991). Respondent Judge took no action on it: no order to show cause, no inquiry, no referral. He struck the notices that contained it in No. 2:17-cv-07748 (Ex. HH at 4), and has not addressed them in No. 2:26-cv-09383. Whether that conduct falls short of the Code of Conduct for United States Judges is for the Judicial Council of the Ninth Circuit, before which Petitioner reserves the right to place that question. Under § 3771(b)(1), it left the victim without the protection of the one officer charged with ensuring his rights.

Each notice he has filed asks the Court for the same thing: to decide. The remedy for a victim's repeated requests for a decision is a decision.

G. The Contradiction This Petition Seeks to Resolve

This Court's April 4, 2018 Order acknowledged Petitioner's identification as a victim by DHS, the Operation Software Slashers prosecution in the Western District of Missouri, the Government's recovery of more than $20 million, and Greenway's eligibility for compensation from the established victims' fund. (Ex. M.) The Office's Victim-Witness staff wrote on January 28, 2026:

> "It does not appear that you are an identified crime victim in a federal criminal proceeding." (No. 2:26-cv-09383, Dkt. 2-1, Ex. S, Page ID #:383–384.)

On November 4, 2026, Respondent Judge found that Petitioner and Greenway are "victims of the criminal counterfeiting." (Ex. HH at 2, Page ID #:1467.) He has accorded them no right in either crime-victim case. Those documents are all on this Court's docket. They cannot coexist. Section 3771(d)(3) gives this Court the authority to resolve that contradiction forthwith.

Petitioner seeks no damages. He seeks no vacatur of any prior order. He challenges no charging decision. *See* 18 U.S.C. § 3771(d)(6). He seeks only what the statute guarantees, and what more than a decade of documented institutional failure has denied him: prospective enforcement of rights that attached in March 2015 and have never once been discharged or accorded. *Davis* confirms this Court's jurisdiction. The record confirms the violation. The statute commands the remedy.

V. THE RECORD BEFORE RESPONDENT JUDGE SINCE AUGUST 26, 2026

The following facts are established by the dockets of this Court, of which the Court may take judicial notice. Fed. R. Evid. 201(b). (Exs. CC, DD.) Day counts are as of November 6, 2026.

A. No. 2:26-cv-05207-AB

- **May 14, 2026.** Petitioner filed his Emergency Petition for Enforcement of the Crime Victims' Rights Act (Dkt. 1), with a Notice of Related Cases invoking General Order 08-05, § 5.2 (Dkt. 4). One hundred seventy-six days have passed.
- **May 18 and June 24, 2026.** The United States was personally served by registered process server on May 18, 2026, and served again under Rule 4(i) by Priority Mail on June 24, 2026. (Ex. BB at 65–68; Exs. W, X.) By letter dated June 2, 2026, the Office acknowledged receipt in writing and then disclaimed service. (No. 2:26-cv-05207, Dkt. 44 at 19, Page ID #:1141.) On June 19, 2026, an attorney acting for Petitioner on a limited-scope basis wrote to the Office requesting a conference. The Office never responded. (*Id.* at 21, Page ID #:1143; Ex. Z.)
- **July 31 – August 14, 2026.** Petitioner applied to disqualify the prior judge under 28 U.S.C. §§ 144, 455(a), and 455(b)(1), supported by a sworn affidavit. (Dkts. 16, 17.) Under the Court's General Order, the application was referred by random draw to Judge Fernando M. Olguin, who returned it for a conflict; then to Judge Wesley L. Hsu, who returned it for a conflict;

then to Judge Fernando L. Aenlle-Rocha, who denied it on August 14, 2026. (Dkts. 19, 23, 24, 25, 29, 30.) That afternoon, the prior judge struck Petitioner's Application to Take Up and Decide the Petition Forthwith and to Direct the United States to Respond, his Notice of Clerical Error seeking the § 5.2 referral to the Chief Judge, and his Motion for Reasonable Protection. (Dkt. 35.) On August 18, he struck the refiled versions and warned Petitioner of sanctions. (Dkt. 43.)

- **August 14, 2026.** The prior judge ordered Petitioner to show cause by August 21, 2026, why the action should not be dismissed for failure to serve, and stated that the Court "will discharge this order upon the filing of a timely proof of service or a demonstration of good cause." (Dkt. 36; Ex. II.) Petitioner timely responded on August 21, 2026, with the proofs of service and a declaration. (Dkt. 44; Ex. II.) The order has never been discharged. Seventy-seven days have passed since Petitioner responded.
- **August 24–26, 2026.** Petitioner applied again to disqualify the prior judge, under 28 U.S.C. § 455(b)(5)(i), because the prior judge had become a named respondent in No. 2:26-cv-09383. (Dkt. 47.) Fifty minutes after that application was entered on the docket, the prior judge recused himself, and the case was reassigned to Respondent Judge "for all further proceedings." (Dkt. 49 & docket entry; Exs. CC, EE.) Seventy-two days have passed.
- **September 1, 2026.** Petitioner filed an Emergency Notice and Application of Non-Opposition to Deem the Petition Unopposed and to Take Up and Decide the CVRA/MVRA Petition Forthwith. (Dkts. 50, 51; Ex. JJ.) It has not been ruled on. Sixty-six days have passed. The exhibits to that Application include 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.), verified under penalty of perjury by DHS Supervisory Special Agent Shawn S. Gibson on January 30, 2015. (Dkt. 51, Ex. C, Page ID #:1299–1326 (pages 1–27 of the

complaint); Ex. PP at 72 (verification).) It has been before Respondent Judge, unaddressed, since September 1, 2026.

- **Never addressed.** The related-case referral to the Chief Judge under General Order 08-05, § 5.2, which Petitioner has requested since May 14, 2026 (Dkts. 4, 26, 45, 46); Petitioner's August 10 response to the Government's August 5 filing in *United States v. McCormick* (Dkt. 27); and his August 17 Notice that Local Rules 6-1 and 7-3 do not govern a motion under the Act (Dkt. 37). None has been addressed by any order.
- **October 21, 2026.** Respondent Judge denied as moot Petitioner's motion to disqualify the prior judge (Dkt. 47), which had been pending before him since August 26. (Dkt. 53; Ex. GG.) This is the only order Respondent Judge has entered in the case. To decide that motion, Respondent Judge had before him the record of the first disqualification application, both strike orders, and the order to show cause. It did not address the Petition, the Application at Dkt. 50, or the order to show cause.
- **Today.** The United States has not appeared, answered, opposed, or filed anything in the case. No order directs it to.

B. No. 2:26-cv-09383-AB

- **August 21, 2026.** Petitioner filed his Victims' Emergency Petition (Dkt. 1; Ex. BB), with Exhibits A through AA (Dkt. 2) and a Notice of Related Cases invoking § 5.2 (Dkt. 3). The Clerk issued sixty-day summonses on a petition the statute requires be decided forthwith. (Dkts. 4–6.) Seventy-seven days have passed.
- **August 26 through September 10, 2026.** Petitioner filed his Emergency Notice and Application for Reasonable Protection under 18 U.S.C. § 3771(a)(1) and 42 U.S.C. § 10607(c)(2) (now 34 U.S.C. § 20141(c)(2)) (Dkts. 9, 10); an Updated Emergency Notice and Application to Take Up and Decide the Petition Forthwith and to Identify Assets for Recovery under the MVRA

(Dkts. 15, 16); and a Supplemental Emergency Application to Take Up and Decide the Petition Forthwith and Deem It Unopposed under Local Rule 7-12 (Dkts. 18, 19).

- **September 14, 2026.** Respondent Judge signed the order transferring the case to himself as related to No. 2:26-cv-05207 "for all further proceedings." (Dkt. 21; Ex. FF.) The next day he issued his Initial Standing Order. (Dkt. 22.) These are the only orders entered in the case. Fifty-three days have passed.
- **September 15 and 17, 2026.** Petitioner filed a Notice of Supplemental Facts and Renewed Application to Take Up and Decide the Petition Forthwith, and to Deem It Unopposed. (Dkts. 23, 24, 26.)
- **September 23 and 30, 2026.** Petitioner gave notice of the Government's continuing non-compliance with 18 U.S.C. § 3771(c)(1) and 28 C.F.R. §§ 45.11 and 45.12, and of supplemental facts regarding the danger from which he has sought protection. (Dkts. 28–30.)
- **October 14, 2026.** Petitioner moved to disqualify the Office (Dkt. 36), set for hearing November 20, 2026, and filed an Emergency Ex Parte Application for decision forthwith, on the papers, or an advanced hearing. (Dkts. 37, 38, 40; Ex. LL.) The ex parte application has not been ruled on. Twenty-three days have passed. The November 4, 2026 Order in No. 2:17-cv-07748 denied as moot the separate motion to disqualify the Office filed in that case (No. 2:17-cv-07748, Dkt. 37; Ex. HH at 4, Page ID #:1469); it did not address the motion in this case, which remains pending.
- **October 19 through November 2, 2026.** Petitioner filed an Emergency Application for Leave to File Supplemental Facts (Dkt. 44), gave notice of re-service on the Government at its request (Dkts. 46, 49), and filed notices of supplemental facts concerning the Office's duty to report and the complaints filed with the State Bar of California, the Department of Justice Inspector

General, the California Attorney General, and the Ninth Circuit. (Dkts. 52, 54, 56, 58, 60.)

- **Today.** None of the applications at Dkts. 9, 15, 18, 23, 26, 37, or 44 has been ruled on. The Petition has not been taken up. The United States has not appeared. No order directs it to.

C. On November 4, 2026, Respondent Judge Reviewed the Entire Docket and Decided Petitioner's Closed Civil Case Instead

No. 2:17-cv-07748 is a 2017 civil action under 42 U.S.C. § 1983 and the Federal Tort Claims Act, closed since 2018, in which Petitioner has no right to decision forthwith. On September 30, 2026, Petitioner moved in that case to set aside the 2018 judgment for fraud on the court. (No. 2:17-cv-07748, Dkt. 28.) After Judge Wright recused, the case was transferred to Respondent Judge on October 1, 2026. Thirty-four days later, he decided it. (Ex. HH.)

The November 4, 2026 Order states that "[u]pon review of these filings and the entire docket, neither oppositions nor a hearing are necessary." (Ex. HH at 1, Page ID #:1466.) It vacated the hearings set for November 6 and 20, 2026. (*Id.*) It describes Petitioner and Greenway as "victims of the criminal counterfeiting." (*Id.* at 2, Page ID #:1467.) It denied the motion to set aside as untimely and, "[e]ven accepting Plaintiff's late-presented allegations of fraud on the court as true," as unable to overcome the jurisdictional bar to Petitioner's § 1983 claims. (*Id.* at 3, Page ID #:1468.) It struck six of Petitioner's notices as "similarly repetitive and unduly burdensome." (*Id.* at 4, Page ID #:1469.) And it admonished Petitioner that "similar overlong briefs or other rule violations, whether in this case or in his related cases, may be stricken." (*Id.* at 3 n.2, Page ID #:1468.)

The Order is equally notable for what it does not say. Having found Petitioner and Greenway "victims of the criminal counterfeiting," it does not mention the Crime Victims' Rights Act, the Mandatory Victims Restitution Act, restitution, the seized assets, or the forfeiture complaint. It describes the 2017 action as one in

which "Plaintiff was dissatisfied with how the Defendants' agents handled the case and allegedly failed to assist him." (Ex. HH at 2, Page ID #:1467.) But the 2018 Order recited that Greenway had been identified as a victim and that the United States Attorney's Office for the Western District of Missouri had agreed to add Greenway as a victim, and it attributed those facts to the Government's own motion. (No. 2:17-cv-07748, Dkt. 13 at 2–3, Page ID #:210–211.) A federally identified victim asking the Government to accord the rights Congress gave him is not a dissatisfied customer; he is a participant the Act refuses to relegate "to bystander status." *Davis*, slip op. at 24. The Order accepted Petitioner's showing of fraud on the court "as true," and on that premise required nothing of the Government: no response, no explanation, no referral. (Ex. HH at 3, Page ID #:1468.) It relied on the 2018 Order's alternative Rule 12(b)(6) rulings, although that Order held the court lacked subject-matter jurisdiction, and a court without jurisdiction may only "announc[e] the fact and dismiss[] the cause." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998). Both points had been placed before Respondent Judge. (No. 2:17-cv-07748, Dkt. 54; No. 2:26-cv-05207, Dkt. 47 at 29–31, Page ID #:1221–1223.) And it vacated a hearing two days before it was to be held on a motion the Government had let pass unopposed, without mentioning that the Government had filed nothing.

The Order's defects appear on its face. Read against the docket it says it reviewed, the November 4, 2026 Order contains the following errors, each of which was decided against the victim:

- **It held a Rule 60(d)(3) motion "untimely."** (Ex. HH at 3, Page ID #:1468.) The one-year limit of Rule 60(c)(1) governs only motions under Rule 60(b)(1)–(3). Rule 60(d)(3) provides that the Rule "does not limit a court's power to . . . set aside a judgment for fraud on the court." The power is "so great, and so free from procedural limitations," that there is no time limit on it. *United States v. Estate of Stonehill*, 660 F.3d 415, 443–44 (9th Cir. 2011). "Surely it

cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944). The motion set out that law. (No. 2:17-cv-07748, Dkt. 28 at 42–43, Page ID #:850–851.) The Order does not mention it.

- **It held that Petitioner "was aware of these grounds long ago" because the 2021 motions "appear to raise the same grounds."** (Ex. HH at 3.) The 2021 motions were struck, not decided; a struck motion adjudicates nothing. And they could not have raised the grounds on which the 2026 motion rested: the Gibson-verified forfeiture complaint, which Petitioner first obtained in 2026, and the Government's August 5, 2026 filing in *United States v. McCormick*, which "did not exist before August 5, 2026, the date it was filed." (No. 2:17-cv-07748, Dkt. 28 at 15–16, 47–48, Page ID #:823–824, #:855–856.) The Ninth Circuit has called the argument that a victim should have detected a government fabrication sooner "absurd." *Lanuza*, 899 F.3d at 1034 n.11.
- **It describes the 2021 motions inconsistently.** It states that "attorney D'Attaray filed a motion to disqualify Judge Wright and a motion to set aside the judgment, both of which were denied." (Ex. HH at 2, Page ID #:1467.) A page later it states, correctly, that the motions to set aside were "stricken." (*Id.* at 3, Page ID #:1468.) They were struck under Local Rules 7-3 and 11-6. (No. 2:17-cv-07748, Dkts. 20, 25.) No court has denied them on the merits.
- **It miscounts the claims it relies on.** It states that the 2017 Complaint "asserts five causes of action," and then lists seven: Counts 1 through 7. (Ex. HH at 2, Page ID #:1467.)
- **It faulted the memorandum's length without ruling on the request for leave.** The Order states that the memorandum "is about 30 pages long and therefore violates Local Rule 11-6.1," and admonishes Petitioner that similar briefs "in this case or in his related cases" may be stricken. (Ex. HH at 3 n.2.)

Local Rule 11-6.1 sets a word limit, not a page limit. The motion stated its word count, 9,641 words, and expressly requested leave to exceed the limit, explaining that it documented six acts of fraud on the court spanning 2016 to 2026, each requiring record citation, and stating that Petitioner did not oppose a corresponding enlargement for the Government's response, "so the Government suffers no prejudice." (No. 2:17-cv-07748, Dkt. 28 at 10–11, 49, Page ID #:818–819, #:857.) Concurrently with the motion, Petitioner served the Office with a letter identifying the motion, its grounds, and the relief sought, and inviting it to state its position in writing. (*Id.* at 46, Page ID #:854.) Local Rule 7-3 exists so that the parties may "discuss thoroughly . . . the substance of the contemplated motion and any potential resolution"; "[t]he rule exists to narrow disputes." (*Id.* at 7, Page ID #:815.) The Office narrowed nothing. It did not respond to the letter, did not object to the length, did not oppose the request for leave, and filed no opposition at all. The Order does not mention or rule on the request for leave. It enforced against the victim a length objection the Government never made, after the Government had declined the conference that rule exists to produce. That is the sequence of 2021, when the Office failed to answer counsel's conference request, then asked the Court to strike the motion under Local Rules 7-3 and 11-6, and the Court did. (No. 2:17-cv-07748, Dkt. 23 at 2, Page ID #:750; Dkt. 24 at 3, 14–15, Page ID #:762, #:773–774; Dkt. 25, Page ID #:776.)

- **It questioned whether Petitioner is represented, though the motion answered the question.** The Order states that "[i]t is not clear if Plaintiff is still represented by counsel." (Ex. HH at 2 n.1.) The motion is captioned and signed "Plaintiff in Pro Se, Individually," and states that Petitioner "appears solely in his individual capacity, in propria persona, pursuant to 28 U.S.C. § 1654." (No. 2:17-cv-07748, Dkt. 28 at 1, 14, Page ID #:809, #:822.)

- **It decided an unopposed motion without saying it was unopposed.** The Government filed no opposition by its October 16, 2026 deadline, and Petitioner gave sworn notice of that fact. (No. 2:17-cv-07748, Dkt. 47 at 21–22, Page ID #:1122–1123.) Under Local Rule 7-12, the failure to file a required opposition may be deemed consent to the motion. The Order instead held that "neither oppositions nor a hearing are necessary," vacated the hearing, and denied the motion on grounds the Government never raised. (Ex. HH at 1, 3.)
- **It denied the motion to disqualify the Office as moot "in light of the foregoing."** (Ex. HH at 4, Page ID #:1469.) The same motion, directed to the Office's role in Petitioner's crime-victim case, is pending in No. 2:26-cv-09383 (Dkt. 36). Nothing in the Order's disposition of the 2017 action resolves the Office's conflict in the case that remains open before Respondent Judge.

An order that reviews "the entire docket" and then misstates what the docket shows, applies a time limit the Rule forbids, faults a page count under a word rule while ignoring the request for leave, and decides an unopposed motion on grounds no party raised has not accorded the victim the right to be reasonably heard, 18 U.S.C. § 3771(a)(4), or to be treated with fairness, § 3771(a)(8). Each error was entered in an order that found him a victim, and each was a failure of the Court's duty to ensure his rights, § 3771(b)(1).

Twelve days before that Order, Petitioner gave the Court sworn notice that the Office's opposition was due October 16, 2026, that none was filed, and that the Office had not answered his Local Rule 7-3 notices of September 30, October 2, and October 5, or his written inquiry of October 21. (No. 2:17-cv-07748, Dkt. 47 at 21–22, Page ID #:1122–1123; *id.*, Escamilla Decl. ¶¶ 2–4; Ex. NN.) In the alternative, he asked the Court to "order the Government to answer, on the merits and under oath," and to set an evidentiary hearing. (*Id.* at 23, Page ID #:1124.) The Order

struck that Notice, held that "neither oppositions nor a hearing are necessary," and denied the motion as untimely, a ground the Office, having filed nothing, never raised. (Ex. HH at 1, 3–4.) The Order also held the motion untimely because the 2021 motions "appear to raise the same grounds." (Ex. HH at 3, Page ID #:1468.) They could not have. The motion rested on evidence Petitioner discovered in 2026 and that no 2021 filing contained: 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. Jan. 30, 2015), verified under penalty of perjury by DHS Supervisory Special Agent Shawn S. Gibson, describing the "Software Slashers" investigation and the seizure of the conspirators' assets twenty-one months before the same agent reported a ruling that suspended that investigation as to Greenway. (No. 2:17-cv-07748, Dkt. 28 at 19–20, Page ID #:827–828.) That complaint had been in Respondent Judge's record in No. 2:26-cv-05207 since September 1, 2026, as Exhibit C to Petitioner's unruled Application of Non-Opposition, which asked him to recognize Petitioner's victim status and to note the seized assets for purposes of mandatory restitution. (No. 2:26-cv-05207, Dkt. 50 at 34–37, Page ID #:1271–1274; Dkt. 51, Ex. C, Page ID #:1299–1326.) The identical notices filed in No. 2:26-cv-09383 (Dkts. 52, 54, 56, 58, 60) were not struck there. They remain on that docket, unaddressed.

Petitioner does not ask this Court to review that Order, and reserves the right to seek its reconsideration in No. 2:17-cv-07748. Petitioner cites it for three facts it establishes in Respondent Judge's own words. First, Respondent Judge recognizes Petitioner as a victim. Second, Respondent Judge has reviewed the entire record and has knowledge of the related cases, which he named. Third, Respondent Judge had the time and the record to decide Petitioner's motions without opposition or hearing when he chose to. He has not chosen to in the two cases where Congress required it.

D. What Has Not Been Done

In the seventy-two days since No. 2:26-cv-05207 was reassigned to him, and the fifty-three days since he transferred No. 2:26-cv-09383 to himself, Respondent Judge has not:

- taken up or decided either Petition;
- ruled on any of the eight applications asserting a victim's right pending before him (No. 2:26-cv-05207, Dkt. 50; No. 2:26-cv-09383, Dkts. 9, 15, 18, 23, 26, 37, 44);
- discharged, or acted on, the August 14, 2026 order to show cause to which Petitioner responded on August 21, 2026;
- ordered the United States to appear, respond, or state its position on any right asserted;
- set any schedule, or held any hearing, in either case; or
- stated any reason for the delay.

VI. WHAT RESPONDENT JUDGE HAD BEFORE HIM, AND WHAT HE DID

A. Right by Right

Two filings decided or struck by Respondent Judge set out, right by right, how Petitioner's rights had been denied and what the Court had the power to do about it: the disqualification application in No. 2:26-cv-05207, which he decided on October 21, 2026 (Dkt. 47; Ex. KK), and the November 2, 2026 Notice in No. 2:17-cv-07748, which he struck on November 4, 2026 (Dkt. 56), and which remains unaddressed in No. 2:26-cv-09383 as Dkt. 60. The Act "was enacted to make crime victims full participants in the criminal justice system." *Kenna*, 435 F.3d at 1016. The Act "was designed to be a broad and encompassing statutory victims' bill of rights." *Degenhardt*, 405 F. Supp. 2d at 1342. Measured against each right in § 3771(a), the record shows what was before him and what he did.

The right to be reasonably protected from the accused, § 3771(a)(1). Before him: the striking, twice, of Petitioner's Motion for Reasonable Protection

from an enterprise with "a documented history of witness intimidation, bribery, and murder" (No. 2:17-cv-07748, Dkt. 56 at 13–14, Page ID #:1421–1422; No. 2:26-cv-05207, Dkts. 31, 35, 42, 43); Petitioner's January 12, 2026 written request for protection, never answered (No. 2:26-cv-05207, Dkt. 9, Ex. R, Page ID #:694–703); and his sworn account of three men attempting to breach his warehouse at night and unmarked vehicles at his residence (No. 2:17-cv-07748, Dkt. 56 at 25–26, Page ID #:1433–1434). Pending before him: the Application for Reasonable Protection filed August 26, 2026 (No. 2:26-cv-09383, Dkt. 9). What he did: nothing.

The right to reasonable, accurate, and timely notice, § 3771(a)(2). Before him: that the Government had never disclosed the case number or status of the sealed Western District of Missouri proceedings, and that its Victim-Witness staff, told of sealed charges in Missouri, searched public cases in this District and wrote, "It does not appear that you are an identified crime victim in a federal criminal proceeding. We cannot assist you." (No. 2:17-cv-07748, Dkt. 56 at 25, Page ID #:1433.) Pending before him: the forfeiture complaint itself, placed on the record September 1, 2026 and never addressed. (No. 2:26-cv-05207, Dkt. 51, Ex. C, Page ID #:1299–1326.) What he did: nothing.

The right to be reasonably heard, § 3771(a)(4). Before him: two petitions and eight applications asserting a victim's right. What he did: vacated the only two hearings Petitioner had obtained in No. 2:17-cv-07748, held that "neither oppositions nor a hearing are necessary," struck six of Petitioner's notices, and set no hearing in either crime-victim case. (Ex. HH at 1, 3–4.)

The right to confer with the attorney for the Government, § 3771(a)(5). Before him: "A victim cannot confer with a party that refuses to enter his case." (No. 2:26-cv-05207, Dkt. 47 at 28, Page ID #:1220.) And: two chiefs of the Office's civil sections were told in writing that the law imposes no service precondition on a crime victim, were invited to show otherwise, and did not. (No. 2:17-cv-07748, Dkt. 56 at 14–16, Page ID #:1422–1424.) What he did: required nothing of the Office.

The right to full and timely restitution as provided in law, § 3771(a)(6). Before him: that restitution for an offense committed by fraud or deceit is mandatory, 18 U.S.C. § 3663A(a)(1), (c)(1)(A)(ii), "in the full amount of each victim's losses," § 3664(f)(1)(A); that "[n]o victim shall be required to participate in any phase of a restitution order," § 3664(g)(1); and that a court may identify victims beyond those the government brings to its attention and allow a victim to prove up its own claim for restitution, even over the government's objection, *see United States v. Gamma Tech Indus., Inc.*, 265 F.3d 917 (9th Cir. 2001). (No. 2:17-cv-07748, Dkt. 56 at 34–36, Page ID #:1442–1444.) Before him also: *Davis* itself, on which both petitions rest, holding that a § 3664(d)(5) petition is a motion asserting a victim's right that must be decided forthwith. Pending before him: the request to note the seized assets for purposes of mandatory restitution. (No. 2:26-cv-05207, Dkt. 50 at 36–37, Page ID #:1273–1274.) What he did: nothing.

The right to proceedings free from unreasonable delay, § 3771(a)(7). Before him: "The unexplained, three-month passage of time without a ruling by the district court does not comply with the statute." *In re Simons*, 567 F.3d at 801. (No. 2:17-cv-07748, Dkt. 56 at 13, Page ID #:1421.) What he did: let the five-month-old Petition in No. 2:26-cv-05207 pass its sixth month without a ruling.

The right to be treated with fairness and with respect for the victim's dignity and privacy, § 3771(a)(8). Before him: that in 2021 the presiding judge, before the Office had appeared, raised for the Government a defense it never raised; that "[c]laim preclusion, like issue preclusion, is an affirmative defense," *Taylor v. Sturgell*, 553 U.S. 880, 907 (2008); that courts serve as "neutral arbiter of matters the parties present," *Greenlaw*, 554 U.S. at 243; and that a court "must accord the parties fair notice and an opportunity to present their positions" before acting on its own initiative, *Day*, 547 U.S. at 210. (No. 2:17-cv-07748, Dkt. 56 at 10–13, 32, Page ID #:1418–1421, #:1440.) Before him also: "a Court that has required nothing of that Government while striking his own filings." (No. 2:26-cv-05207, Dkt. 47 at

37, Page ID #:1229.) What he did, two days later: required nothing of the Government, decided Petitioner's motion on a ground the Government never raised, and struck the Notice that warned against it.

The court's duty to ensure, § 3771(b)(1), and to decide forthwith, § 3771(d)(3). Before him: both commands, quoted, together with the Code of Conduct's direction that "[a] judge should dispose promptly of the business of the court," Canon 3A(5), and that a judge "should take appropriate action upon receipt of reliable information indicating the likelihood . . . that a lawyer violated applicable rules of professional conduct," Canon 3B(6); and the observation that, in 2021, "[n]o order to show cause ever issued concerning the representations the victims had shown to be false." (No. 2:17-cv-07748, Dkt. 56 at 21–23, Page ID #:1429–1431.) What he did: issued no order to show cause, no order to respond, and no decision.

Each of these rights was asserted, documented, and placed before Respondent Judge in his own cases, with the authority that governs it and the action the Court could take. None was accorded. Whether that conduct meets the Code of Conduct for United States Judges is for the Judicial Council of the Ninth Circuit, before which Petitioner reserves the right to place that question. Whether it accords a crime victim the rights Congress gave him is for this Court, and the answer is in the record.

B. The Same Record That Disqualified the Prior Judge Was Before Respondent Judge, and He Repeated It

On August 24, 2026, Petitioner applied to disqualify the prior judge in No. 2:26-cv-05207. (Dkt. 47; Ex. KK.) The application was entered at 10:24 a.m. on August 26, 2026; at 11:14 a.m., fifty minutes later, the prior judge recused himself and the case was reassigned to Respondent Judge. (Dkts. 47, 49.) The application came to Respondent Judge with the case. He held it fifty-six days and denied it as moot in a single sentence. (Dkt. 53; Ex. GG.) Every circumstance that application

documented against the prior judge has since recurred before Respondent Judge, with the application itself in his hands.

Party status. The application showed that a judge who is a named party may not preside, that § 455(b)(5)(i) makes the bar mandatory, and that § 455(e) forbids any waiver. (Dkt. 47 at 7, 10–12, Page ID #:1199, #:1202–1204.) Respondent Judge is a named Respondent here. The rule that took the prior judge off the case applies to him in the same words. (*See* Section II, *supra*.)

The related-case referral. The application showed that Petitioner's Notice of Related Cases designated *United States v. McCormick*, No. 2:20-CR-00346(B)-DMG, before Chief Judge Gee; that the mandatory referral under General Order 08-05, § 5.2 was never performed; that the case was instead related to the 2017 civil-rights action that Petitioner had disclaimed; and that "a defect in it cannot be cured by striking the paper that identifies it." (Dkt. 47 at 12–14, 34–36, Page ID #:1204–1206, #:1226–1228.) It asked, as separate relief, that the related-case processing "be corrected to address the related case designated in Petitioner's Notice of Related Cases." (*Id.* at 38, Page ID #:1230.) That request did not depend on who presided, and the prior judge's recusal did not moot it. Respondent Judge denied the entire application as moot without addressing it. (Dkt. 53.) The referral has never been performed, while the same relatedness question has been briefed before Chief Judge Gee. (Dkt. 47 at 36, Page ID #:1228; *McCormick*, Dkts. 861, 862.) Respondent Judge then warned Petitioner that rule violations "in his related cases" may be stricken. (Ex. HH at 3 n.2.)

Recognizing the victim, then according nothing. The application showed that the prior judge's 2018 Order recited the criminal investigation and the Government's agreement to add Greenway as a victim, and that his 2021 Order then faulted the victim for failing to identify any criminal proceeding: "The Court recited the very proceeding it said had not been identified." (Dkt. 47 at 17, Page ID #:1209.) On November 4, 2026, Respondent Judge found that Petitioner and Greenway are

"victims of the criminal counterfeiting." (Ex. HH at 2.) He has not accorded a single right in either crime-victim case. He recognized the very victims whose petitions he has not decided.

The same information, placed before the court repeatedly, disposed of unaddressed. The application showed that documented, undenied misconduct had been placed before the prior judge "five (5) times over seven (7) months" in 2021 and "disposed of each time sua sponte, unaddressed," while "the sole procedural objection was cured by the movant and defaulted by the government." (Dkt. 47 at 18–20, Page ID #:1210–1212.) The same information was placed before Respondent Judge five times in fifteen days in No. 2:17-cv-07748: on October 19, 22, 29, and 30, and November 2, 2026. (No. 2:17-cv-07748, Dkts. 40, 44, 52, 54, 56.) It was placed before him again in No. 2:26-cv-09383. (No. 2:26-cv-09383, Dkts. 44, 52, 54, 56, 58, 60.) Each filing was preceded by written notice to the Office, and the Office answered none. On November 4, 2026, Respondent Judge denied the first as futile and struck the other four, together with two more of his notices (No. 2:17-cv-07748, Dkts. 47, 50), without addressing what any of them contained. (Ex. HH at 3–4.)

Sworn, undenied, and accepted as true. The application showed that the facts were sworn in a § 144 affidavit, that such facts "are taken as true," *Berger v. United States*, 255 U.S. 22, 35–36 (1921), and that across two successive filings the Government "declined to deny the documented conduct on the merits." (Dkt. 47 at 21–23, Page ID #:1213–1215.) Respondent Judge went further than the prior judge: he expressly accepted Petitioner's showing of fraud on the court "as true." (Ex. HH at 3.) Having done so, he required nothing of the Government.

Authority before the court, faulted as absent. The application showed that the prior judge struck the victim's filings for citing no authority when the authority, 18 U.S.C. § 3771(d)(3) and Fed. R. Civ. P. 83(a)(1), was in the very notice the order cited; and it stated the governing principle: "A victim cannot confer with a party that

refuses to enter his case, nor be defaulted for the silence of the party the statute charges with protecting him." (Dkt. 47 at 27–28, Page ID #:1219–1220.) Respondent Judge struck six notices as "repetitive and unduly burdensome" without identifying any rule they violated, though each carried its Local Rule 7-3 statement, and denied Petitioner's motion as untimely, a ground the silent Government never raised. (Ex. HH at 3–4.) The victim was defaulted for the silence of the party the statute charges with protecting him.

Overreach spent on the victim. The application showed a court that "spent its overreach on the victim rather than on the documented fabrications before it," putting on the record that the victim's claims were baseless "while the Government's fabrications went unmentioned." (Dkt. 47 at 30–31, Page ID #:1222–1223.) Respondent Judge, "on the Court's own consideration," concluded that none of Petitioner's material could overcome the 2018 dismissal; admonished him; and warned that his filings in this and his related cases may be stricken. (Ex. HH at 3 & n.2.) The fabrications he had accepted as true went unmentioned. No order to show cause issued; no referral was made.

A Government that argues where the victim cannot answer. The application showed a Government that never entered the victim's case yet filed against his victim status in a criminal case where he has no standing, *McCormick*, Dkt. 864, and "a Court that asked nothing of the party it should hold to account, yet struck the filings of the party it should protect." (Dkt. 47 at 31–32, Page ID #:1223–1224.) Under Respondent Judge, the Government has still not appeared in No. 2:26-cv-05207, has asked to be served again in No. 2:26-cv-09383, and has filed nothing on the merits in either. (No. 2:26-cv-09383, Dkts. 46, 49.) Respondent Judge has asked nothing of it.

Canon 3B(6). The application quoted Canon 3B(6) and showed that reliable information of attorney misconduct had been placed before the court and that "the record does not reflect that it was addressed." (Dkt. 47 at 26, Page ID #:1218.)

Respondent Judge decided that application. Between October 19 and November 2, 2026, the same information came before him in eleven filings across Nos. 2:17-cv-07748 and 2:26-cv-09383. The record does not reflect that he addressed it.

The application closed with this sentence: "The victim is left to face a Government that argues against him only where he cannot answer, before a Court that has required nothing of that Government while striking his own filings." (Dkt. 47 at 37, Page ID #:1229.) Fifty minutes after that application was entered, the prior judge stepped aside. Seventy days after it was reassigned to him, Respondent Judge struck six of the victim's filings and required nothing of the Government. The prior judge was shown the record and left the case. Respondent Judge was shown the same record, decided the application that set it out, and did what it described.

VII. FIVE YEARS OF STRIKES, AND RESPONDENT JUDGE'S ADDITION TO THEM

The institutional conflict just described did not resolve itself into a single denial. It hardened into a practice: substantive victim's-rights filings disposed of on procedural grounds, the substance never reached, the rights never accorded. On September 20, 2021, the Court struck Petitioner's Rule 60(d)(3) motion under Local Rule 7-3. (No. 2:17-cv-07748, Dkt. 20, Page ID #:541.) On November 9, 2021, it struck the refiled motion under Local Rules 7-3 and 11-6. (*Id.*, Dkt. 25, Page ID #:776.) On August 14, 2026, it struck four of Petitioner's filings in No. 2:26-cv-05207, including his Motion for Reasonable Protection, under Local Rules 6-1 and 7-3 and the generative-artificial-intelligence order. (No. 2:26-cv-05207, Dkt. 35.) On August 18, 2026, it struck the refiled versions under Local Rule 7-3. (*Id.*, Dkt. 43.) (Ex. BB at 59–63.)

On November 4, 2026, Respondent Judge added the next. He struck six of Petitioner's notices as "excessive," "repetitive and unduly burdensome," without identifying any rule they violated, though each had been preceded by written notice to the Office under Local Rule 7-3 and Paragraph 12(b) of his Standing Order, and

each requested "no ruling and no relief beyond what the pending motions already seek." (Ex. HH at 4; No. 2:17-cv-07748, Dkt. 56 at 6, Page ID #:1414.) He denied the fraud-on-the-court motion as untimely, a ground the Office, having filed nothing, never raised. (Ex. HH at 3.) And he warned that "similar overlong briefs or other rule violations, whether in this case or in his related cases, may be stricken." (*Id.* at 3 n.2.) The related cases are Petitioner's two crime-victim petitions.

None of this is how a court treats a pro se filing. A document filed pro se "is to be liberally construed." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam); *see Haines v. Kerner*, 404 U.S. 519, 520 (1972) (pro se filings held "to less stringent standards than formal pleadings drafted by lawyers"). Petitioner placed that rule before the Court on August 17, 2026, after the first strikes (No. 2:26-cv-05207, Dkt. 37 at 17), and again before Respondent Judge on October 19, 2026 (No. 2:17-cv-07748, Dkt. 40 at 23, Page ID #:978; No. 2:26-cv-09383, Dkt. 44 at 23, Page ID #:1586). No order striking his 2026 filings mentions it. Each struck the filing without notice or an opportunity to cure, and none construed it liberally or reached its substance.

The violations are specific, and each attaches to a right the statute names. Every strike denied Petitioner the right to be reasonably heard, 18 U.S.C. § 3771(a)(4), because a filing struck before it is read is a filing never heard. Each was entered in disregard of the Court's duty to ensure the victim is afforded his rights, § 3771(b)(1). The five-year accumulation, in matters the statute commands be decided forthwith, denied the right to proceedings free from unreasonable delay, § 3771(a)(7). And to strike a victim's filings while faulting him for failing to identify a status this Court's own orders had already recorded, and Respondent Judge had just found, denied the right to be treated with fairness and with respect for his dignity, § 3771(a)(8).

A. The Burden the Law Imposes Runs to the Victim, Not From Him

Underlying every strike is a premise the governing law does not contain: that the victim bears the burden of proving his way to rights that are his by operation of the offense. Nowhere in the Crime Victims' Rights Act, the Attorney General Guidelines for Victim and Witness Assistance, or the Justice Manual is a crime victim required to prevail in civil litigation to establish his status, to "identify a criminal proceeding" as the price of being heard, to confer with a party that refuses to appear, or to complete a civil summons process before a protection request may be reached. The statute runs the other way. The Government must make its best efforts to see that he is notified of and accorded his rights. 18 U.S.C. § 3771(c)(1). The Court must ensure that he is afforded them. § 3771(b)(1). The definition asks only whether he was directly and proximately harmed by a federal offense. § 3771(e)(2)(A). (Ex. BB at 63–65.)

At every stage, a Mexican-American grandfather, appearing on his own behalf, with no formal legal training, has been made to carry a burden the law places on others. He was told he must re-earn his status through civil litigation. He was faulted for failing to identify a proceeding the Court's own order had recorded. He was struck for failing to confer with a party that would not appear. And on November 4, 2026, after the Court found him a victim, he was admonished, and his notices reporting the Government's silence were struck as burdensome.

VIII. PETITIONER SERVED THE GOVERNMENT, TOLD IT THE LAW, AND ASKED IT TO CONFER — AND IT HAS NEVER APPEARED

On May 18, 2026, a professional process server personally served the United States Attorney's Office with the first Petition; the proof of service is on file. On June 2, 2026, the Office acknowledged receipt and nonetheless sent a service-of-process letter. On June 19, 2026, counsel acting in a limited-scope capacity told the Office's Civil Chief in writing that the Office had actual notice and was "in no way prejudiced," and set out the governing law: that a petition under the Act is asserted

by motion and decided forthwith under § 3771(d)(3), and that "[t]he summons-and-answer apparatus associated with damages litigation does not fit this proceeding." *See Kenna*, 435 F.3d at 1017. On June 24, 2026, Petitioner completed service under Federal Rule of Civil Procedure 4(i) on both the Office and the Attorney General. (Ex. W; Ex. BB at 65–68.)

The Office has had actual notice of No. 2:26-cv-05207 since at least June 2, 2026, when it acknowledged the Petition in writing. (No. 2:26-cv-05207, Dkt. 44 at 19, Page ID #:1141.) It has had notice of Petitioner's underlying allegations since December 2025, when its Victim-Witness staff confirmed that the Office had "reviewed it and the attachments." (*Id.* at 24, Page ID #:1146.) On August 5, 2026, the Office chose to characterize Petitioner's claims, in a case to which he is not a party, as "broad allegations of government misconduct that courts have repeatedly rejected." (*United States v. McCormick*, No. 2:20-cr-00346(B)-DMG, Doc. 864 at 4, Page ID #:11427; Ex. AA.) It has not said so, or anything else, in either of the cases in which Petitioner actually asserted those claims.

On August 16, 2026, Petitioner told the Office in writing that a petition under the Act is asserted by motion and is self-executing; that Rule 4 service, Local Rules 6-1 and 7-3, and the sixty-day summons-and-answer sequence of civil damages litigation do not govern it, *Kenna*, 435 F.3d at 1017; Fed. R. Civ. P. 83(a)(1); that its duties under § 3771(c)(1) attached upon notification, without any requirement that the victim first prove his status to it; and that its best-efforts duty extended to informing the Court, which had threatened dismissal on a service ground. He invited the Office to identify any provision of the Act, the Justice Manual, or the Attorney General Guidelines requiring a crime victim to serve, notify, meet and confer with, or exhaust remedies against the Government before his rights are accorded. (No. 2:26-cv-05207, Dkt. 44 at 19–25, Page ID #:1141–1147.) The Office identified none. In No. 2:26-cv-09383, its only communication was a September 3, 2026 letter by AUSA Medrano raising the same service objection; Petitioner asked her on

September 14, 2026 to cite the authority for it, and none was ever cited. (No. 2:26-cv-09383, Dkt. 24, Ex. C, Page ID #:1066–1078; No. 2:17-cv-07748, Dkt. 56, Escamilla Decl. ¶ 5.) The Office then asked to be re-served, and Petitioner re-served it on October 20–21, 2026. (No. 2:26-cv-09383, Dkts. 46, 49.) The statute requires decision forthwith. Section 3771(d)(3) does not say the district court shall decide forthwith once the Government chooses to respond; it says the court "shall take up and decide" the motion forthwith. If the Government will not respond, the Court must decide without it, or order it to respond. Respondent Judge has done neither.

Petitioner has complied with Local Rule 7-3 and with Paragraph 12(b) of Respondent Judge's Standing Order at every step. Since June 2026 alone, he has asked the Office in writing to confer, or to state its position, on eleven occasions: June 19, August 16, September 14, September 30, October 2, October 5, October 7, October 12, October 21, October 28, and November 1, 2026. (No. 2:26-cv-05207, Dkt. 44 at 19–25, Page ID #:1141–1147; No. 2:26-cv-09383, Dkt. 24, Ex. C, Page ID #:1066–1078; *id.*, Dkt. 34; No. 2:17-cv-07748, Dkt. 33; *id.*, Dkt. 40-1, Ex. A; *id.*, Dkt. 44, Ex. A; *id.*, Dkt. 47 at 21, Page ID #:1122; *id.*, Dkt. 52, Ex. A; *id.*, Dkt. 56, Ex. A.) The Office has not answered one. In 2021, and again in August 2026, Petitioner's filings were struck under Local Rule 7-3 for failure to confer with that same Office. (No. 2:17-cv-07748, Dkts. 20, 25; No. 2:26-cv-05207, Dkts. 35, 43.) The right "to confer with the attorney for the Government in the case," 18 U.S.C. § 3771(a)(5), belongs to the victim. It cannot be exercised against an Office that will not answer, and the local rule cannot be turned against him for that silence.

A defense supplied, again. Insufficient service of process is a defense that belongs to the party served, and it is waived unless that party raises it by motion or in a responsive pleading. Fed. R. Civ. P. 12(b)(5), (h)(1). The Office has never raised it in this Court. It raised it only by letter, while declining to appear. (No. 2:26-cv-05207, Dkt. 44 at 19, Page ID #:1141; No. 2:26-cv-09383, Dkt. 24, Ex. C, Page ID #:1066–1078.) Nor did the law require it of the victim. Petitioner told the Office

so twice, in writing. On August 16, 2026: "nowhere in the Crime Victims' Rights Act, 18 U.S.C. § 3771, the Department of Justice's Justice Manual, or the Attorney General Guidelines for Victim and Witness Assistance . . . is there any provision requiring a crime victim to meet and confer with the United States Attorney's Office under Local Rule 7-3, to provide twenty-eight days' notice under Local Rule 6-1, or to serve the Government under Rule 4, as a condition of asserting or enforcing his rights." (No. 2:26-cv-05207, Dkt. 44 at 20, Page ID #:1142.) On September 14, 2026: "Not one of them conditions a victim's rights, or the government's duty to accord them, on the victim first perfecting Rule 4(i) service upon your office." (No. 2:26-cv-09383, Dkt. 24, Ex. C, Page ID #:1066–1078.) The Department's own Guidelines start its responsibilities to victims at "the opening of a criminal investigation." Attorney General Guidelines for Victim and Witness Assistance, Art. III.B.4, at 13 (2022 ed.). The Office never answered either letter, and never identified any contrary authority. Both letters are on Respondent Judge's dockets. (No. 2:26-cv-05207, Dkt. 51, Ex. B; No. 2:26-cv-09383, Dkt. 24, Ex. C.) The day after he transferred No. 2:26-cv-09383 to himself, Respondent Judge entered a Standing Order directing that any defendant "not served within 90 days after the case is filed must be dismissed pursuant to Fed. R. Civ. P. 4(m)." (No. 2:26-cv-09383, Dkt. 22 ¶ 1; Ex. DD.) In No. 2:26-cv-05207, he left undischarged an order to show cause threatening dismissal on a service ground. (No. 2:26-cv-05207, Dkts. 36, 44.) Petitioner then served the Office again, at its own request, on October 20–21, 2026. (No. 2:26-cv-09383, Dkts. 46, 49; Ex. MM.) Respondent Judge has not required it to respond. The victim was held to the service rules of ordinary civil litigation, for the benefit of a party that never asked the Court for that protection, and the party served was held to nothing. That is the sequence of 2021: a defense the Government did not raise in court, supplied for it, and no response required of it. (Section XI.E, *infra*.)

As Petitioner told the Court in August, "[a] victim cannot confer with a party that refuses to enter his case." (No. 2:26-cv-05207, Dkt. 47 at 28, Page ID #:1220.) Despite being served under Rule 4(i), the Government "has not appeared and has not opposed the Petition on the merits." (*Id.* at 31, Page ID #:1223.) Respondent Judge ruled on that motion. He did not address either statement.

IX. LOCAL RULE 7-3 HAS BEEN TURNED AGAINST THE VICTIM BY THE OFFICE THAT DISCLAIMED SERVICE AND WILL NOT CONFER, WHILE THAT OFFICE SPEAKS ABOUT HIM ONLY WHERE HE CANNOT ANSWER

Section VIII shows that the Office has never appeared. This Section shows what has been done with that silence. For five years, the conference rule of Local Rule 7-3 has been the stated ground on which Petitioner's victim's-rights filings were struck, while the Office on the other side of every required conference has declined to confer, declined to appear, and declined to answer the substance of anything Petitioner has put before it. In the same period, the Office has spoken about Petitioner to a federal judge only once, in a case to which he is not a party, and what it said is contradicted by the records it cited. That record is now before the State Bar of California, and it was placed before Respondent Judge on October 29, 2026. He struck it in one case and has not addressed it in the other.

A. The Rule Exists to Narrow a Dispute Between Parties Who Have Joined It

Respondent Judge's own Standing Order states the purpose of the rule he enforces: "The purpose of meeting and conferring is to attempt to obviate the need for a contested filing or to narrow the issues the Court must resolve." (No. 2:26-cv-09383, Dkt. 22 ¶ 12(b); Ex. DD.) The same paragraph states that "[t]he Court strictly enforces this rule for all parties, including pro se litigants," and that the Court "may strike or outright deny a motion" for noncompliance. (*Id.*)

A conference needs a counterpart. The Office has filed nothing in No. 2:26-cv-05207 or No. 2:26-cv-09383: no appearance, no answer, no opposition, no

statement of position. Its only communications in those cases have been a June 2, 2026 letter that acknowledged receipt of the Petition and disclaimed service; a September 3, 2026 letter by AUSA Alarice M. Medrano raising the same service objection, for which no authority was ever cited when Petitioner asked for it; and a request to be served again, which Petitioner honored on October 20–21, 2026. (No. 2:26-cv-05207, Dkt. 44 at 19, Page ID #:1141; No. 2:26-cv-09383, Dkt. 24, Ex. C, Page ID #:1066–1078; *id.*, Dkts. 46, 49; Ex. MM.) There is no contested issue to narrow with a party that has joined none. A rule whose purpose is to bring parties together cannot be satisfied, and cannot be violated, by the party who keeps asking to meet.

Nor does the governing law make a conference, or service, or a sixty-day summons cycle, a condition of a victim's rights. The Act directs that rights "shall be asserted" by "motion" and that the district court "shall take up and decide any motion asserting a victim's right forthwith." 18 U.S.C. § 3771(d)(3). The Ninth Circuit calls that enforcement scheme "a unique regime." *Kenna*, 435 F.3d at 1017. The right "to confer with the attorney for the Government in the case" is the victim's right, § 3771(a)(5); the duty to "make their best efforts to see that crime victims are notified of, and accorded," their rights is the Department's, § 3771(c)(1). Local rules "shall be consistent with Acts of Congress," 28 U.S.C. § 2071(a); Fed. R. Civ. P. 83(a)(1). Nowhere in the Act, the Attorney General Guidelines for Victim and Witness Assistance, or the Justice Manual is a crime victim required to serve the Government, wait out a summons period, or confer with it before his rights attach or before a court may decide his motion. (Section VII.A, *supra*.) Petitioner told the Office exactly that on August 16, 2026, and invited it to identify any contrary provision. It identified none. (No. 2:26-cv-05207, Dkt. 44 at 19–25, Page ID #:1141–1147.) Yet the Clerk issued sixty-day summonses on a Petition the statute requires be decided forthwith (No. 2:26-cv-09383, Dkts. 4–6), and the Office has treated the summons cycle, rather than the statute, as the measure of its obligations.

"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). The Office has had written notice of every filing at issue, and of the record underlying them since December 2025. (No. 2:26-cv-05207, Dkt. 44 at 24, Page ID #:1146.)

B. How the Rule Has Been Used, 2021 to November 4, 2026

The sequence below is drawn entirely from the dockets. In every instance, the party that did not confer was the Office, and the party whose filing was struck was the victim.

- **September 18–20, 2021.** Petitioner's Rule 60(d)(3) motion documenting the fabricated ruling was filed and, two days later, struck for failure to comply with Local Rule 7-3. (No. 2:17-cv-07748, Dkts. 18, 20, Page ID #:541.)
- **September 21 – October 5, 2021.** Counsel wrote to the Office to confer on September 21, 2021. The Office's own later filing acknowledges that contact and states that its first invitation to confer came on October 4 and 5, 2021, two weeks later. (No. 2:17-cv-07748, Dkt. 23 at 2, Page ID #:750.) Counsel's reply states that the September 21 email was forwarded within the Office only on October 4, and that no one from the Office telephoned to confer. (*Id.*, Dkt. 24 at 3, Page ID #:762; Ex. K.)
- **October 25, 2021.** The Office's opposition led with "GENERAL OBJECTIONS UNDER LOCAL RULES 7-3 AND 11-6" and asked that the motion be denied on that basis. On the merits, it denied none of the documented acts; it assumed the fraud "arguendo." (No. 2:17-cv-07748, Dkt. 23 at 2, 5, Page ID #:750, #:753.)
- **November 9, 2021.** The refiled motion was struck under Local Rules 7-3 and 11-6, the two grounds the Office had urged. Its substance was never reached. (No. 2:17-cv-07748, Dkt. 25, Page ID #:776.)

- **June 2 and June 19, 2026.** The Office acknowledged receipt of the Petition in No. 2:26-cv-05207 and disclaimed service. Seventeen days later, counsel acting for Petitioner on a limited-scope basis asked the Office in writing to confer. It never responded. (No. 2:26-cv-05207, Dkt. 44 at 19, 21, Page ID #:1141, #:1143; Ex. Z.)
- **August 14 and 18, 2026.** Four of Petitioner's filings, including his Motion for Reasonable Protection, were struck under Local Rules 6-1 and 7-3, and the refiled versions were struck under Local Rule 7-3, for failure to confer with the Office that had disclaimed service and not responded to the June 19 request. (No. 2:26-cv-05207, Dkts. 35, 43.) The Office had raised no objection; it had filed nothing.
- **August 16 – November 1, 2026.** Petitioner asked the Office in writing to confer, or to state its position, on eleven occasions. It answered none. (Section VIII, *supra*.)
- **October 16, 2026.** The Office's opposition to the renewed Rule 60(d)(3) motion was due. None was filed. (No. 2:17-cv-07748, Dkt. 47 at 1, Page ID #:1105; Ex. NN.)
- **October 28–29, 2026.** Petitioner wrote to Mr. Beck and AUSA Medrano at 5:55 a.m. on October 28, "ask[ing] for the Office's position under Local Rules 7-3 and 7-19.1," on four written questions, by 10:00 a.m. the next day. No response came. (No. 2:26-cv-09383, Dkt. 56 at 6–7 & Ex. A, Page ID #:1764–1765, #:1794–1795.)
- **November 4, 2026.** Respondent Judge struck six of Petitioner's notices, each preceded by written notice to the Office under Local Rule 7-3 and Paragraph 12(b) of his Standing Order, as "repetitive and unduly burdensome"; faulted the length of Petitioner's memorandum without ruling on his request for leave to exceed the limit; denied the fraud-on-the-court motion as untimely, a ground the Office never raised; and warned that "other rule violations,

whether in this case or in his related cases, may be stricken." (Ex. HH at 3 & n.2, 4.) The Order imposes no requirement of any kind on the Office.

The pattern is the same in both periods. In 2021, the Office invoked the conference rule after its own two-week delay in answering a request to confer, and the Court struck the motion on the Office's grounds. In 2026, the Office did not need to invoke it. It filed nothing, and the rule was applied against the victim on its behalf. In neither period did the Office answer the substance. In both, the substance was never reached. A rule designed to make parties talk has been used, against the party asking to talk, to keep a court from hearing what the other party has never denied.

> "The government cannot invoke a failure to meet and confer (Local Rule 7-3) when it is the government that has declined to appear, respond, or accept the conference offered on June 19, 2026." (Petitioner's letter to the Office of August 16, 2026, No. 2:26-cv-05207, Dkt. 44 at 19–25, Page ID #:1141–1147.) The Office never answered it.

C. What the Office Has Said About the Victim, Where He Cannot Answer

The one place the Office has addressed Petitioner's claims since 2021 is *United States v. McCormick*, No. 2:20-cr-00346(B)-DMG, the prosecution of Petitioner's nephew, in which Petitioner is not a party and could not respond. On August 5, 2026, the Office filed an opposition there that identifies as 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." (*McCormick*, Dkt. 864 at 1, Page ID #:11424; Ex. AA.) Petitioner takes no position in that prosecution, and nothing in this Petition asks any court to review a charging or prosecutorial decision. 18 U.S.C. § 3771(d)(6). What concerns Petitioner is what the filing said about him.

On October 26 and 27, 2026, Petitioner submitted verified complaints to the Office of Chief Trial Counsel of the State Bar of California concerning those four attorneys: First Assistant United States Attorney Bilal A. Essayli and AUSAs

Castañeda, Seiden, and Alexander. The State Bar has acknowledged the complaints concerning Mr. Castañeda (Case No. 26-O-30410) and Ms. Alexander (Case No. 26-O-30405), as it earlier acknowledged Petitioner's complaint concerning former Acting United States Attorney Tracy L. Wilkison (Case No. 26-O-30254). (No. 2:26-cv-09383, Dkt. 56, Exs. C–G, Page ID #:1813–1947; No. 2:17-cv-07748, Dkt. 52 at 10, Page ID #:1169.) Their outcome is for the State Bar. Petitioner does not ask this Court to decide them. What matters here is the record they compile, every item of which is a filed court document or a written communication, and the fact that it was placed before Respondent Judge.

That record shows the following statements, each made in the August 5, 2026 filing, each contradicted by the documents the filing itself cited, and none corrected after Petitioner identified them on the record five days later. (No. 2:26-cv-05207, Dkt. 27 at 4, 7, Page ID #:861, #:864; No. 2:26-cv-09383, Dkt. 56, Ex. C at 7–9, Page ID #:1820–1822.)

- **"[B]road allegations of government misconduct that courts have repeatedly rejected."** (*McCormick*, Dkt. 864 at 4, Page ID #:11427.) No court has decided those allegations on the merits. The 2017 action was dismissed for lack of subject-matter jurisdiction. (No. 2:17-cv-07748, Dkt. 13 at 10, 13, Page ID #:218, #:221.) The 2021 petition was dismissed sua sponte, before the Office appeared, by reaffirming that order. (No. 2:21-cv-01910, Dkt. 10.) The Ninth Circuit affirmed on law-of-the-case grounds. And the one time the allegations were put to the Office in sworn form, it assumed them "arguendo." (No. 2:17-cv-07748, Dkt. 23 at 5, Page ID #:753.)
- **"[R]ejected by prior courts," followed in the next sentence by "the government does not address them here in substance."** (*McCormick*, Dkt. 864 at 5, Page ID #:11428.) The filing characterized the allegations as rejected while declining to address them, and it counted among the "rejected"

proceedings Petitioner's Petition in No. 2:26-cv-05207, which it acknowledged was "pending," and in which the Office has never appeared.

- **"[D]ismissing with prejudice Mr. Escamilla's October 2017 civil complaint for various alleged violations of civil rights, due process, and equal protection."** (*Id.* at 4, Page ID #:11427.) The filing listed the claims and omitted the ground of decision: lack of subject-matter jurisdiction, resting on DHS's decision not to investigate "due to the negative judgment in the Colorado action," a judgment that never existed. (No. 2:17-cv-07748, Dkt. 13 at 13, Page ID #:221.) The order the filing cited recites Greenway's identification as a victim and the recovery of more than $20 million. (*Id.* at 2, Page ID #:210.)
- **"[N]early ten years after Mr. Escamilla's 2017 complaint, but less than one month before defendant's trial, Mr. Escamilla filed another CVRA enforcement petition."** (*McCormick*, Dkt. 864 at 5, Page ID #:11428.) The Petition was filed on May 14, 2026, after the counsel retained to file it withdrew without doing so, and after Petitioner put the record before the Office in writing five times between December 18, 2025 and February 12, 2026, without action. The Office was served on May 18, 2026, and acknowledged receipt on June 2, 2026. It has never answered the Petition whose timing it questioned. (No. 2:26-cv-09383, Dkt. 56, Ex. C at 8, Page ID #:1821; No. 2:26-cv-05207, Dkt. 44 at 19, Page ID #:1141.)
- **"Mr. Escamilla's ill-fated complaint and CVRA petitions have nothing to do with defendant's criminal case."** (*McCormick*, Dkt. 864 at 5, Page ID #:11428.) Petitioner's Notice of Related Cases, served on the Office, designated *McCormick* as related. (No. 2:26-cv-05207, Dkt. 4.) The Mandatory Victims Restitution Act makes the restitution those petitions seek mandatory. 18 U.S.C. § 3663A(a)(1), (c)(1)(A)(ii).

- **Petitioner's former counsel's "purported representation of Mr. Escamilla."** (*McCormick*, Dkt. 864 at 4, Page ID #:11427.) The engagement is documented in a written retainer agreement dated May 29, 2024. (No. 2:26-cv-09383, Dkt. 56, Ex. C at 8, Page ID #:1821.)
- **Petitioner described only as the defendant's "uncle."** (*McCormick*, Dkt. 864 at 4–5.) The order the filing cited recites that DHS identified Petitioner's company as a victim, that more than $20 million had been recovered, and that he "may be able to recover from an established victims' fund." (No. 2:17-cv-07748, Dkt. 13 at 2, Page ID #:210.)

> ". . . rejected by prior courts and that defendant now teases in the instant filing. Because defendant does not ask the Court to decide the allegations of misconduct, the government does not address them here in substance." (*United States v. McCormick*, No. 2:20-cr-00346(B)-DMG, Dkt. 864 at 5, Page ID #:11428 (Aug. 5, 2026).) Rejected, in one sentence; not addressed, in the next.

The August 5, 2026 characterization is the latest of a series, each a different account of the same non-existent ruling, and none ever corrected:

- **2016, DHS:** a Colorado court "found in favor of Selakovic against Greenway Nutrients." (No. 2:17-cv-07748, Dkt. 1, Ex. 9, Page ID #:50.) No court so ruled.
- **2018, the Office:** the Colorado result "leaves plaintiffs' valid ownership of Greenway's trademarks in doubt." (*Id.*, Dkt. 9 at 11, Page ID #:132.)
- **2021, the Office:** DHS would not move forward "given that the civil trademark infringement suit did not reach a judgment on the merits," and Petitioner's showing was of "misconduct that did not occur." (*Id.*, Dkt. 15 at 3–4, Page ID #:321–322.) Then, confronted with the sworn record, it assumed the fraud "arguendo." (*Id.*, Dkt. 23 at 5, Page ID #:753.)

- **December 2025 – February 2026, the Office's Victim-Witness Unit:** the matter "seems to be related to two civil cases which were dismissed"; "[i]t does not appear that you are an identified crime victim in a federal criminal proceeding. We cannot assist you"; and it could not "find any case matching the defendant's names." (No. 2:26-cv-05207, Dkt. 44 at 24, Page ID #:1146; No. 2:26-cv-09383, Dkt. 2-1, Exs. S, U, Page ID #:383–384, #:392–393.)
- **August 5, 2026, the Office:** claims "that courts have repeatedly rejected." (*McCormick*, Dkt. 864 at 4, Page ID #:11427.)

These statements were not made without notice. The record placed before the State Bar, and then before Respondent Judge, shows the following. On December 18, 2025, Petitioner sent First Assistant United States Attorney Essayli a written notice addressed to him by name, setting out the fabricated ruling, the 2018 declarations, and the Office's 2021 non-denial, and asking that the matter be investigated and reported; the Office's Victim-Witness Unit later confirmed that it had "reviewed it and the attachments." (No. 2:26-cv-09383, Dkt. 2-1, Ex. P, Page ID #:343–353; No. 2:26-cv-05207, Dkt. 44 at 24, Page ID #:1146.) The same notice was Exhibit P to the Petition personally served on the Office on May 18, 2026, which the Office acknowledged on June 2, 2026. (No. 2:26-cv-09383, Dkt. 56, Ex. D, Page ID #:1845–1878.) AUSA Castañeda has been on the *McCormick* prosecution team since September 2020, under each of the three administrations whose filings carried the fabricated ruling. AUSAs Seiden and Alexander have appeared as counsel of record in *McCormick* since at least April 24, 2026, four months after the First Assistant was notified in writing. (No. 2:26-cv-09383, Dkt. 56, Ex. C at 12, 15, 24, Page ID #:1825, #:1828, #:1837; *id.*, Exs. E, F, Page ID #:1879–1942.) The electronic file of the August 5, 2026 filing lists its author as "LAlexander" and records its generation from a word-processing document at 11:59 p.m. on August 4, 2026. (*Id.*, Ex. C at 7, Page ID #:1820.)

The asymmetry is the point. The Office has three forums in which Petitioner is a party and can answer: No. 2:26-cv-05207, No. 2:26-cv-09383, and No. 2:17-cv-07748. It has filed nothing on the merits in any of them, and in the last it let its opposition deadline pass. It has spoken about Petitioner's claims in one forum only, the one in which he cannot be heard. As Petitioner put it to the State Bar, the Office made those statements "in the one place I could not answer, while refusing to answer me in the two places I can." (No. 2:26-cv-09383, Dkt. 56, Ex. C at 18, Page ID #:1831.) That inversion is a continuing denial of the right to be treated with fairness and with respect for the victim's dignity, 18 U.S.C. § 3771(a)(8), and of the Department's duty to make its best efforts to see that the victim is accorded his rights, § 3771(c)(1).

D. The Office's Civil Division Was Handed the Fabrication and the Order Disproving It, Asked to Correct the Record, and Has Not

The Office cannot say it lacked the documents. On August 16, 2026, Petitioner wrote to AUSA Daniel A. Beck of the Office's Civil Division, the attorney who had acknowledged receipt of the Petition on June 2, 2026, and placed both documents side by side. (No. 2:26-cv-05207, Dkt. 44 at 19–25, Page ID #:1141–1147.) On September 1, 2026, Petitioner filed the same letter with the Court as Exhibit B to his Application of Non-Opposition. (*Id.*, Dkt. 51, Ex. B, Page ID #:1291–1298; Ex. JJ.)

The letter quoted Agent Gibson's October 28, 2016 email: "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. While we understand that you may disagree with this judgement, our agency is bound by decision of the court and therefore are restricted on what we can do." Beneath it, the letter quoted what the Colorado court had actually ruled on March 31, 2015, rejecting Selakovic's argument and finding that "the Amended Complaint sufficiently alleges that Mr. Selakovic expressly aimed his conduct at Colorado."

(No. 2:26-cv-05207, Dkt. 44 at 22–23, Page ID #:1144–1145.) It then stated the conclusion the two documents compel:

> "Gibson's representation was not merely inaccurate — it was the inverse of what the court actually held. The Colorado court ruled for the victim on the trademark claim, not against it." (Petitioner's letter to AUSA Daniel A. Beck, Aug. 16, 2026, No. 2:26-cv-05207, Dkt. 44 at 23, Page ID #:1145.)

And it told Mr. Beck precisely what the Department's best-efforts duty required of him: "At minimum, discharging your 'best-efforts' obligation in these circumstances requires your office to correct the record before the Court — to advise the Court that no order dated August 17, 2015, finding in favor of Selakovic against Greenway, exists — rather than to stand silent while the victim is deprived of his rights and status on the basis of that fabrication." (*Id.* at 24, Page ID #:1146.) The letter also anticipated the Office's one possible answer, that it had no role in the Missouri prosecution, and met it: "Notwithstanding the fact that your office was not involved in the investigation, oversight, or prosecution of Operation Software Slashers in the Western District of Missouri does not diminish its obligations." (*Id.* at 23, Page ID #:1145; *see* 18 U.S.C. § 3771(c)(1).)

The Office did not correct the record. It did not respond to the letter. It did not dispute a word of it. It did not appear in No. 2:26-cv-05207, where the letter was filed, or in No. 2:26-cv-09383, where it was incorporated. In No. 2:17-cv-07748, where the 2018 judgment built on the fabrication remains in force, it let its October 16, 2026 opposition deadline pass without filing anything. (No. 2:17-cv-07748, Dkt. 47 at 1, Page ID #:1105; Ex. NN.) On October 28, 2026, Petitioner wrote to Mr. Beck again, with AUSA Medrano, asking among other things whether the Office "intend[s] to address, correct, or escalate the allegations of attorney misconduct described in the pending Rule 60(d)(3) motion for fraud on the court." No answer came. (No. 2:26-cv-09383, Dkt. 56 at 7 & Ex. A, Page ID #:1765, #:1794–1795.)

Silence is not the whole of it. The only account of Petitioner's claims the Office has given any court, eleven days before that letter, was that they had been "repeatedly rejected." (Section IX.C, *supra*.) That account was not withdrawn after the letter reached the Civil Division. It joined a sequence in which the same non-existent ruling has appeared in a new form each time the Government needed it:

- **As a judgment (2016):** a court "found in favor of Selakovic against Greenway Nutrients"; DHS was "bound by decision of the court." (No. 2:17-cv-07748, Dkt. 1, Ex. 9, Page ID #:50.) Used to suspend the investigation as to the identified victim.
- **As doubt (2018):** the Colorado result "leaves plaintiffs' valid ownership of Greenway's trademarks in doubt." (*Id.*, Dkt. 9 at 11, Page ID #:132.) Used to win dismissal on the premise that DHS acted on "the negative judgment in the Colorado action." (*Id.*, Dkt. 13 at 13, Page ID #:221.)
- **As a non-judgment (2021):** the civil suit "did not reach a judgment on the merits," so the 2018 and 2021 orders were "entirely consistent." (*Id.*, Dkt. 15 at 3–4, Page ID #:321–322.) Used to oppose disqualification of the judge who entered both orders.
- **As immaterial (2021):** "assuming arguendo that [one] existed, it would not 'affect the outcome of the case.'" (*Id.*, Dkt. 23 at 5, Page ID #:753.) Used to oppose the motion to set aside the judgment it produced.
- **As rejected (2026):** "broad allegations of government misconduct that courts have repeatedly rejected." (*McCormick*, Dkt. 864 at 4, Page ID #:11427.) Used to oppose the appointment of conflict-free counsel, in a case to which the victim is not a party.

Each version was offered in support of the Government's litigation position at the time. None was offered as a correction. And no version has ever been reconciled with the one fact that disposes of all of them: no court entered the ruling Agent Gibson reported. The Office has held the Colorado docket since 2018, when

it filed that docket itself. (No. 2:17-cv-07748, Dkt. 9-2, Ex. 3, Page ID #:171–173.) Since August 16, 2026, its Civil Division has also held the order quoted beside the fabrication and a written request to correct the record. A Department officer who has been shown that a court record before a federal judge rests on a ruling that does not exist, and who does nothing, has not made his "best efforts to see that crime victims are notified of, and accorded," their rights. 18 U.S.C. § 3771(c)(1). He has left in place the instrument that took them. Each day the record stands uncorrected is a continuing denial of the right to be treated with fairness and with respect for the victim's dignity, § 3771(a)(8), and of the right to full and timely restitution, § 3771(a)(6), which the fabricated ruling cut off at its source.

E. What Respondent Judge Had Before Him on October 29, 2026, and What He Did With It

On October 29, 2026, Petitioner filed the same notice of supplemental facts in No. 2:26-cv-09383 and No. 2:17-cv-07748. Each was captioned "No Hearing Requested; No Ruling Requested." Each reported the October 28 letter to the Office under Local Rules 7-3 and 7-19.1 and the Office's failure to respond to it; Petitioner's complaint that morning to the Department of Justice Office of the Inspector General; and the State Bar complaints described above. In No. 2:26-cv-09383, the notice was filed in support of Petitioner's pending Motion to Disqualify the Office (Dkt. 36) and attached, as Exhibits C through G, the four verified statements in support of the complaints and the State Bar's acknowledgments. (No. 2:26-cv-09383, Dkt. 56 at 6, Page ID #:1764; *id.*, Exs. A–H, Page ID #:1794–1958; No. 2:17-cv-07748, Dkt. 52, Page ID #:1160 *et seq.*; Ex. OO.)

Six days later, Respondent Judge struck the notice in No. 2:17-cv-07748, with five others, as "repetitive and unduly burdensome," and denied Petitioner's motion to disqualify the Office in that case as moot. (Ex. HH at 4.) The Order does not mention the August 5, 2026 statements, the State Bar complaints, the Inspector General complaint, or the Office's failure to answer the October 28 letter. In No.

2:26-cv-09383, the notice and the Motion to Disqualify the Office that it supports remain unaddressed.

Canon 3B(6) of the Code of Conduct for United States Judges provides that a judge "should take appropriate action upon receipt of reliable information indicating the likelihood . . . that a lawyer violated applicable rules of professional conduct." The information Respondent Judge received was not a litigant's characterization. It was the Office's own filings, quoted and cited by docket and Page ID; the orders those filings cited; the Office's own written acknowledgments; and the State Bar's case numbers. The record does not reflect that any action was taken. Instead, the filing that reported it was struck as burdensome, and the victim who filed it was warned that further "rule violations" in "his related cases" may be stricken. (Ex. HH at 3 n.2, 4.)

Each of these acts, after October 29, 2026, is an additional and independent violation of a right the statute names:

- **The right to be reasonably heard, § 3771(a)(4).** A notice struck without being addressed is a notice not heard. The Office's statements about Petitioner were heard by a federal judge; Petitioner's answer to them has been heard by none.
- **The right to confer with the attorney for the Government, § 3771(a)(5).** Applied against the victim, Local Rule 7-3 converts the victim's right to confer into a precondition he cannot satisfy, enforced against him for the Government's refusal.
- **The right to be treated with fairness and with respect for the victim's dignity, § 3771(a)(8).** The victim is held to every local rule; the Office, which has filed nothing in three cases, is held to none, and its uncorrected statements about him stand.
- **The court's duty to ensure that the victim is afforded his rights, § 3771(b)(1),** and **the command to take up and decide his motions forthwith, §**

3771(d)(3). Respondent Judge has not directed the Office to respond, to state its position, or to correct the record, and has not decided Petitioner's Motion to Disqualify the Office in No. 2:26-cv-09383.

- **The Department's duty of best efforts, § 3771(c)(1).** Every Department attorney with notice of the record has a continuing duty to see that the victim is accorded his rights. Not one has answered, corrected, or reported anything. (*See* 28 C.F.R. § 45.12.)

Petitioner does not ask this Court to find that any attorney violated any rule of professional conduct; that is for the State Bar. He asks the Court to declare that Local Rule 7-3 does not govern a motion under the Act, that its use against him did not reach or extinguish the rights asserted, and to direct the Government to state its position, in writing and on the merits, on each pending application. (Section XVIII, *infra*.)

X. PETITIONER IS A CRIME VICTIM UNDER 18 U.S.C. § 3771(e)(2)(A)

One question governs everything that follows, because the Government's entire course of conduct has depended on avoiding it: whether Petitioner is a crime victim. He is. The Government's own officer formally identified him as the Lead Victim. The statute defines the term in his favor. His rights attached upon notification, and controlling authority construes the term broadly. There is no civil-litigation prerequisite anywhere in the definition: not in the Crime Victims' Rights Act, not in the Attorney General Guidelines for Victim and Witness Assistance, and not in the Justice Manual. And on November 4, 2026, Respondent Judge found it. (Ex. HH at 2.) The full showing is set out in the August 21, 2026 Petition, incorporated here. (Ex. BB at 27–41.)

A. DHS Formally Identified Greenway as the Lead Victim of a Federal Criminal Prosecution

In March 2015, following a referral from Microsoft's counsel, DHS Special Agent Shawn Gibson, DHS Field Agent Carlos Suarez, and one additional agent

held a recorded, face-to-face meeting with Petitioner in Burbank, California. (Ex. A.) They advised him:

- that David Selakovic and Steven Blackburn were the ringleaders of Operation Software Slashers, one of the Department of Justice's largest criminal counterfeit-goods prosecutions, targeting Microsoft, Adobe, and Greenway;
- that DHS and the United States Attorney's Office for the Western District of Missouri had recovered more than $20 million in forfeited assets in the Operation Software Slashers investigation, a figure the Government confirmed publicly when six defendants pleaded guilty (Section X.A, *infra*);
- that Petitioner would be added as a named Lead Victim and would be eligible for compensation from the victims' restitution fund;
- that federal criminal indictments against Selakovic and Blackburn had been filed under seal in or about January 2015 in the Western District of Missouri; and
- that Petitioner need not file any further civil lawsuit, because the Government's prosecution would protect him. (Ex. BB at 28–29.)

This is not a victim's self-characterization. It is the Government's own identification, made by the DHS agent leading the investigation, memorialized in a recorded meeting, recited in this Court's April 4, 2018 Order from the Government's own motion, and found again by Respondent Judge on November 4, 2026. Agent Gibson's representation that Petitioner would be eligible for compensation from an established victims' fund established Petitioner's documented reliance on the Government to manage the restitution process on his behalf, reliance the statute expressly authorizes. 18 U.S.C. § 3664(g)(1).

Twenty-one months before he reported a ruling that suspended that investigation as to Greenway, the same agent verified under penalty of perjury 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. Jan. 30, 2015), signed by Assistant United

States Attorney James Curt Bohling, describing the Homeland Security Investigations "Software Slashers" investigation and the seizure of the conspirators' accounts, vehicles, and precious metals. (Ex. PP ¶¶ 54–60 & at 72; No. 2:26-cv-05207, Dkt. 51, Ex. C, Page ID #:1299–1326; No. 2:17-cv-07748, Dkt. 28 at 19–20, Page ID #:827–828.) Petitioner first obtained it in 2026. Its claims rest on wire fraud, 18 U.S.C. § 1343, and trafficking in counterfeit labels, documentation, and packaging, 18 U.S.C. § 2318. (Ex. PP ¶¶ 46, 48.) That complaint is the public, verified pleading in the Operation Software Slashers proceedings in the Western District of Missouri: the proceedings in which, Agent Gibson told Petitioner in March 2015, indictments had been filed under seal against Selakovic and Blackburn. (Ex. BB at 28–29.) The public complaint names Casey Lee Ross and other targets; it does not name Selakovic, Blackburn, or Greenway. That omission is the Government's. The Government sealed the charges, the Government drafted the public pleading, and the Government has never disclosed to the victim the case number or status of the sealed proceedings. A victim cannot be faulted for what the Government sealed and what the Government chose to leave out. Even Petitioner's former counsel, in the June 24, 2025 letter ending her representation, identified the proceeding by name and number: *United States v. Casey Lee Ross*, No. 4:15-cr-00196-DGK (W.D. Mo.), "wherein Federal Authorities have asserted that Ross is the owner and main conspirator of Software Slashers." (No. 2:26-cv-09383, Dkt. 52, Ex. D at 5; No. 2:17-cv-07748, Dkt. 52 at 16, Page ID #:1175.) The Department's own Guidelines say the same: "an individual can qualify as a CVRA victim regardless of whether they are named in the indictment." Attorney General Guidelines for Victim and Witness Assistance, Art. III.C.5, at 15 (2022 ed.). In 2021, the presiding judge quoted Petitioner's identification of the "criminal case under seal against SELAKOVIC, BLACKBURN and others" in "criminal proceedings being conducted in the Western District of Missouri," and then faulted him for not identifying a criminal proceeding. (No. 2:21-cv-01910, Dkt. 10 at 2,

Page ID #:294; No. 2:26-cv-05207, Dkt. 47 at 17, Page ID #:1209.) A victim of a defendant convicted in a sealed proceeding "is in equal danger as a victim of a criminal-at-large convicted in a public proceeding," and his notice rights are "untethered to a public court proceeding." *United States v. C.S.*, 968 F.3d 237, 249–50 (3d Cir. 2020).

The meeting at which Greenway was identified as a victim is itself documented. Two of the agents who met with Petitioner in Burbank on March 3, 2015, gave him their business cards: DHS Supervisory Special Agent Shawn S. Gibson and Special Agent Carlos I. Suarez, both of Homeland Security Investigations, Kansas City, 4100 N. Mulberry Drive, Suite 225, Kansas City, Missouri. (No. 2:26-cv-09383, Dkt. 60, Ex. C, Page ID #:2062; No. 2:17-cv-07748, Dkt. 56, Ex. C, Page ID #:1463; Ex. RR.) The verified forfeiture complaint states that the Software Slashers investigation began when "HSI Kansas City received information" in April 2013, and that "HSI Kansas City" executed seizures in it. Agent Gibson verified that complaint. (Ex. PP ¶¶ 54, 106, 108 & at 72.) The agents who identified Greenway as a victim came from the office that opened the investigation, in the district where it was prosecuted. That is the investigation the April 2, 2021 Order called "merely speculation pulled from the ether." (No. 2:21-cv-01910, Dkt. 10 at 2, Page ID #:294.) The same Court's April 4, 2018 Order had already recited the meeting, the investigation, and the recovery, attributing them to the Government's own motion. (No. 2:17-cv-07748, Dkt. 13 at 2–3, Page ID #:210–211.) No evidence contradicted any of it, and the Government had filed nothing in the 2021 case. The characterization was unsupported by the record and disparaged a federally identified crime victim in a public order, contrary to his right to be treated with fairness and with respect for his dignity. 18 U.S.C. § 3771(a)(8). It has never been withdrawn.

The Government has also stated the size of the recovery in its own words. When six defendants pleaded guilty in December 2015, the Government announced

that "investigators seized more than $20.6 million in assets," "including $10,188,777 seized from bank and investment accounts, 10 luxury automobiles and 27 parcels of real estate," and the United States Attorney for the Western District of Missouri described the case as "one of the largest software piracy schemes ever prosecuted by the U.S. Department of Justice." (Press Release, U.S. Immigration & Customs Enforcement, *6 Defendants Plead Guilty in Missouri to $100 Million Software-Piracy Scheme* (Dec. 2015); *accord* 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 seizures recorded in the verified forfeiture complaint were made between December 10, 2014 and January 6, 2015, and that complaint was filed on January 30, 2015, about five weeks before Agent Gibson met with Petitioner in Burbank. (Ex. PP ¶¶ 2–42 & at 72.) The Government's own announcement thus confirms what the 2018 Order recited from the Government's motion: that more than $20 million had been recovered in the investigation in which Greenway was identified as a victim, and that Petitioner "may be able to recover from an established victims' fund." (No. 2:17-cv-07748, Dkt. 13 at 2, Page ID #:210.) No part of it has ever been paid to him, and the Government has never told him why.

Petitioner filed the business cards with this Court on November 2, 2026, in both No. 2:17-cv-07748 and No. 2:26-cv-09383. (No. 2:17-cv-07748, Dkt. 56, Ex. C; No. 2:26-cv-09383, Dkt. 60, Ex. C.) Two days later, Respondent Judge struck the filing in No. 2:17-cv-07748 as "repetitive and unduly burdensome." (Ex. HH at 4.) In No. 2:26-cv-09383, it remains unaddressed.

The Department of Justice, the Western District of Missouri Office, and DHS have never disclosed to Petitioner the case number or outcome of the sealed prosecution of Selakovic and Blackburn, including whether any deferred-prosecution agreement, non-prosecution agreement, plea, conviction, or restitution order was ever entered. (Ex. BB at 29.)

B. The Statutory Definition Has Three Elements, and a Civil-Litigation Prerequisite Is Not One of Them

Section 3771(e)(2)(A) defines a crime victim as "a person directly and proximately harmed as a result of the commission of a Federal offense." Three elements: a person, direct and proximate harm, and a federal offense. Civil-litigation success is not among them. When Agent Gibson's October 2016 email imposed civil-litigation success as the precondition for further Government action, he imposed a condition he had told Petitioner eighteen months earlier did not apply, and a condition the statute forecloses. By that email and those that followed, which concealed the existence and status of the sealed proceedings from the identified Lead Victim, the Government denied Petitioner his right to be informed of any plea bargain or deferred prosecution agreement, § 3771(a)(9), and to notice, § 3771(a)(2). (Ex. BB at 30–31.)

C. Controlling Authority Requires That "Crime Victim" Be Construed Broadly, and Reaches Parties Not Named in the Charging Document

The Act "was designed to be a broad and encompassing statutory victims' bill of rights." *Degenhardt*, 405 F. Supp. 2d at 1342. The Ninth Circuit has explained that the Act sought to change the assumption that crime victims should be "seen but not heard" by "making victims independent participants in the criminal justice process." *Kenna*, 435 F.3d at 1013. Its co-sponsor explained that "this is an intentionally broad definition because all victims of crime deserve to have their rights protected." 150 Cong. Rec. S10912 (Oct. 9, 2004) (statement of Sen. Kyl).

A party qualifies as a victim even when not the target of the crime and not named in the charging document:

> "[The CVRA] does not limit the class of crime victims to those whose identity constitutes an element of the offense or who happen to be identified in the charging document. The statute, rather, instructs the district court to look at the offense itself . . . to determine the harmful effects the offense has on parties. Under the plain language of the statute, a party may qualify as a victim, even though it may not have been the target of the crime, as long as it suffers harm as a result of the crime's commission." *In re Stewart*, 552 F.3d 1285, 1289 (11th Cir. 2008).

The Department's own Guidelines agree: "an individual can qualify as a CVRA victim regardless of whether they are named in the indictment." Attorney General Guidelines for Victim and Witness Assistance, Art. III.C.5, at 15 (2022 ed.).

D. Emotional, Psychological, and Dignitary Harm Is Itself Sufficient

Although the direct and proximate financial harm here is documented and severe, the Act does not require tangible or financial injury. Congress used the broad term "harm," commonly defined as "physical or mental damage: injury." Webster's Third New International Dictionary 1034 (2002). An affront to dignity, standing alone, has been held to confer crime-victim status. *See United States v. Monzel*, 746 F. Supp. 2d 76, 84 (D.D.C. 2010). Where officials inflict dignitary harm on a victim under color of the very statute enacted to protect him, that harm is the injury Congress legislated against in § 3771(a)(8). (Ex. BB at 33–34.)

E. Petitioner's Rights Attached During the Investigation and Included the Right to Confer Before Any Plea

"[T]here are clearly rights under the CVRA that apply before any prosecution is underway." *United States v. BP Prods. N. Am. Inc.*, No. H-07-434, 2008 WL 501321, at *11 (S.D. Tex. Feb. 21, 2008). The statute directs officers engaged in "the detection, investigation, or prosecution of crime" to make their best efforts to accord victims their rights. 18 U.S.C. § 3771(c)(1). The Department's responsibilities "begin as soon as possible after the detection of a crime," generally

"the opening of a criminal investigation." Attorney General Guidelines, Art. III.B.4, at 13. "Congress made the policy decision—which we are bound to enforce—that victims have a right to inform the plea negotiation by conferring with prosecutors before a plea is reached." *In re Dean*, 527 F.3d 391, 394 (5th Cir. 2008). Petitioner has never once been afforded that conference, and has never been told whether any resolution was reached. (Ex. BB at 34–35.)

F. The Predicate Federal Offenses, the Florida Litigation, and the Losses Never Compensated

Michael J. Ryan was Greenway's retained attorney, paid to draft its Private Placement Memorandum, and bound by privilege, fiduciary duty, and a non-disclosure agreement. In or about March 2016, while those duties remained operative, he became the registered agent of Selakovic's HPC Acquisitions, Inc. (later Vegalab, Inc.), and assisted in using Greenway's confidential business model for Selakovic's company. That conduct constitutes independent federal predicate offenses: wire fraud, 18 U.S.C. § 1343; securities fraud, § 1348; and theft of trade secrets, § 1832. (Ex. BB at 35–37; No. 2:17-cv-07748, Dkt. 28 at 23, 36, Page ID #:831, #:844.)

In August 2018, Greenway sued Selakovic, Michael J. Ryan, James D. Ryan, Ecowin, and Vegalab, Inc. in *Greenway Nutrients, Inc. v. Selakovic*, No. 9:18-cv-81104 (S.D. Fla.). On February 14, 2019, the court sustained Greenway's claims, including its claims that the Ryans disclosed Greenway's confidential information and trade secrets to Selakovic in breach of their fiduciary duties (*id.*, Dkt. 81), and on March 6, 2019, the clerk entered default against Ecowin. Greenway documented diverted product with a retail value exceeding $100 million, for which it has never been compensated. (*Id.*, Dkt. 102 at 65; Ex. BB at 37–38.)

On March 29, 2019, Greenway's counsel in that case, John Pierce, moved to withdraw. That same day, Virage SPV-1 executed a $28.5 million loan to Pierce's firm, collateralized against its case portfolio, including Greenway's pending

litigation. No default judgment was entered. Selakovic was never served. No damages were awarded. (Ex. BB at 39; No. 2:17-cv-07748, Dkt. 52 at 20, Page ID #:1179.) In a complaint filed in this District and certified under Rule 11, Greenway alleged that the funding was used "as a pay-off or bribe to induce Pierce" and his firm "to undermine and abandon Greenway's meritorious Florida lawsuit," and no defendant denied those allegations on the merits. (No. 2:17-cv-07748, Dkt. 47 at 13–14, Page ID #:1117–1118; *Greenway Nutrients, Inc. v. Pierce*, No. 2:22-cv-03322, Dkt. 1-1.) Agent Gibson's fabricated civil prerequisite forced Petitioner onto that path to obtain what the Act had guaranteed him through the criminal-justice system. (Ex. BB at 37.)

G. The Harm Is Ongoing, and Independently Certified

In April 2020, Petitioner notified Agent Gibson that James Ryan, Greenway's former attorney, was then serving as interim chief executive of Vegalab, Inc., and invoked his right to be reasonably protected from the accused. Agent Gibson did not respond, and did not notify Petitioner of a single right that notification triggered. (Ex. O; Ex. BB at 39–40.) In March 2022, Gerard P. Fox, a licensed California attorney subject to Rule 11, filed suit on behalf of Greenway and Petitioner asserting twelve causes of action arising from the destruction of Greenway's Florida litigation; a First Amended Complaint followed on January 20, 2023. (Ex. BB at 40–41.)

The harm has not stopped. In December 2025, the primary bad actor was again named a defendant in a federal trademark-infringement action. *MR Innovation Co., Ltd. v. Vegalab S.A.*, No. 1:25-cv-01554 (D. Del. filed Dec. 23, 2025) (complaint under 15 U.S.C. § 1114 against David Selakovic, Vegalab LLC, and Vegalab S.A.). The Vegalab entities named there are entities Greenway sued in 2018 for infringing its own registered trademark, and, as Petitioner set out in his 2021 filings in this Court, the Vegalab enterprise was taken public for Selakovic's benefit using Greenway's own confidential business plan. (No. 2:26-cv-09383, Dkt.

56 at 25, Page ID #:1783; *Greenway Nutrients, Inc. v. Selakovic*, No. 9:18-cv-81104 (S.D. Fla.), Dkt. 1 ¶¶ 177–183; No. 2:17-cv-07748, Dkt. 22 ¶¶ 36–40, Page ID #:628–630.) Petitioner placed that action before the Office in writing on February 5, 2026. (No. 2:26-cv-09383, Dkt. 2-1, Ex. T, Page ID #:385–391.) More than a decade after the Government identified Greenway as a victim, the same actor operates the same enterprise, and the victim has received nothing.

The Government identified Petitioner as the Lead Victim. The statute defines him as a victim. Controlling authority construes the definition to reach him. Federal predicate offenses harmed him directly and proximately. A federal court sustained his claims and entered default. The harm continues. Independent counsel certified it under Rule 11. Respondent Judge found it. Petitioner is a crime victim under 18 U.S.C. § 3771(e)(2)(A), a status that attached in March 2015 and that no court has ever discharged, accorded, or extinguished.

XI. THE ORIGIN OF EVERY VIOLATION: A FABRICATED COURT RULING, FIVE DOCUMENTED ACTS, AND A DECADE WITHOUT EXAMINATION

The violations at the center of this Petition did not begin in 2026. They began with a single fabricated document, and they were built, act by act, into the record of this Court, each act adding a layer to a false narrative, and each layer relied upon, adopted, or left unexamined. What follows is drawn entirely from the record. It explains why a federally identified crime victim has spent a decade unable to have the truth reached on its merits, and it is the record Respondent Judge has held since August 26, 2026.

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

The August 21, 2026 Petition, now pending before Respondent Judge as No. 2:26-cv-09383, Dkt. 1, sets the fabrication beside the record it contradicts. (Ex. BB at 41–45, Page ID #:41–45.) 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 Petitioner from his official government account:

> "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." (Ex. QQ; Ex. I; Ex. BB at 42, Page ID #:42.)

No court ever ruled in favor of Selakovic regarding Greenway's trademark claims. The court had ruled the opposite. On March 31, 2015, Chief Judge Marcia S. Krieger rejected Selakovic's argument:

> "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. . . . Greenway has met its burden of making a prima facie showing of personal jurisdiction over Defendants Blackburn, FSS, and Selakovic. . . . The [Selakovic] Motion to Dismiss is . . . DENIED in all other respects." *Greenway Nutrients, Inc. v. Blackburn*, No. 13-cv-01088-MSK-KMT (D. Colo. Mar. 31, 2015) (Krieger, C.J.) (Ex. D; Ex. BB at 43, Page ID #:43.)

The only entry on that docket on August 17, 2015 was a judgment on a dismissal without prejudice for failure to prosecute. (No. 2:17-cv-07748, Dkt. 9-2, Ex. 3 at 25, Page ID #:172.) On October 27, 2015, Chief Judge Krieger overruled the recommendation that had produced it (DE-151), and on June 13, 2016, she confirmed what remained:

> "The Court notes that at the time the case was dismissed for the Plaintiff's failure to maintain a valid address or to obtain counsel, its claims for trademark infringement, false designation of origin, and unjust enrichment were still viable. These claims were not adjudicated on the merits . . . ." *Greenway Nutrients, Inc. v. Blackburn*, No. 1:13-cv-01088 (D. Colo. June 13, 2016) (DE-155) (Ex. BB at 43–44, Page ID #:43–44; No. 2:17-cv-07748, Dkt. 9-2, Ex. 3 at 26, Page ID #:173.)

"He did not misread the docket. He inverted it." (Ex. BB at 44, Page ID #:44.) Petitioner told Agent Gibson the same day that no such ruling existed. On November 21, 2016, Agent Gibson made the fabrication operative:

> "[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." (Ex. QQ; Ex. BB at 44, Page ID #:44.)

Three weeks earlier the same agent had written that the Government would "continue to investigate." On a court decision that had never been entered, DHS suspended the criminal investigation as to the identified Lead Victim, foreclosed any restitution determination, and severed him from the prosecution. (*Id.* at 45, Page ID #:45.) Twenty-one months before the first of those emails, the same agent had verified, under penalty of perjury, the civil forfeiture complaint describing the Software Slashers investigation. (Ex. PP ¶¶ 54–60 & at 72.)

B. Five Documented Acts Carried the Fabrication into This District

The August 21, 2026 Petition documents five acts by which the fabrication entered and remained in the record of this District. (Ex. BB at 45–55, Page ID #:45–55.)

Act One (January 29, 2018). Robert A. Ramey, Associate Legal Advisor, Office of the Principal Legal Advisor, ICE, declared under penalty of perjury that his queries "identified no electronic or hardcopy record of any administrative tort

claim from either Mr. Escamilla or Greenway Nutrients transmitted to ICE." (No. 2:17-cv-07748, Dkt. 9-1 ¶ 2.) Petitioner had filed a civil-rights complaint with DHS's Office for Civil Rights and Civil Liberties on May 1, 2017, acknowledged the next day. The Office later acknowledged that "undersigned counsel referenced the existence of plaintiff's complaint to CRCL in defendants' reply." (No. 2:17-cv-07748, Dkt. 15 at 3, Page ID #:322.) The 2018 Order relied on the declaration. (Ex. BB at 45–46, Page ID #:45–46.)

Act Two (January 29, 2018). The Office represented that "[a]s far back as June 11, 2013, Escamilla sent threatening and profanity-laced communications to Ryan, his ex-wife, and daughter," attaching a motion filed by Thomas F. Ryan, his former wife, and their daughter, to charge Petitioner with knowledge of the conduct of a different man, Michael J. Ryan, who did not register the entity later known as Vegalab, Inc. with the SEC until March 2016. (Ex. E; Ex. BB at 47–48, Page ID #:47–48.)

Act Three (January 29 and February 16, 2018). Four attorneys of the Office, Nicola T. Hanna, Dorothy A. Schouten, Robin M. Monteleone, and Grace Y. Park, republished the fabricated "August 17, 2015" ruling under their signatures and represented that Greenway's trademark ownership was "in doubt." (No. 2:17-cv-07748, Dkt. 9 at 11; Dkt. 11 at 6; Ex. BB at 48–49, Page ID #:48–49.) Gibson's June and August 2015 written confirmations that the investigation was continuing were attached to their own declaration. (*Id.*)

Act Four (July 19, 2021). After Petitioner's March 2021 filing had identified the ruling as fabricated, the Office, under the name of Acting United States Attorney Tracy L. Wilkison, recast it as a merits judgment:

> "Judge Wright correctly noted that plaintiffs could not identify any criminal proceeding supporting their rights as victims since, (citation omitted), 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 2, Page ID #:321; Ex. BB at 49–51, Page ID #:49–51.)

Act Five (October 25, 2021). Confronted with a sworn motion documenting each of these acts, the Office denied none of them:

> "While Plaintiffs have also failed to establish a fraud on the court, assuming arguendo that [one] existed, it would not 'affect the outcome of the case' and would not support the relief Plaintiffs seek." (No. 2:17-cv-07748, Dkt. 23; Ex. J; Ex. BB at 51–55, Page ID #:51–55.)

Two orders of the same court then stood on that record. They cannot be reconciled:

> April 4, 2018 Order (No. 2:17-cv-07748, Dkt. 13 at 2, Page ID #:210), reciting that the Greenway investor defendants had "already been subject to extensive investigation for criminal trademark infringement"; that "ICE and the United States Attorney's Office had recovered over $26 million in the investigation"; that Plaintiffs "may be able to recover from an established victims' fund"; and that the United States Attorney's Office for the Western District of Missouri "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), holding that Plaintiffs "failed to specifically identify a criminal proceeding supporting their claim that they have been victimized by the United States or the Department of Homeland Security and its agents," in the same order that quoted their identification of a "criminal case under seal against SELAKOVIC, BLACKBURN and others" in "criminal proceedings being conducted in the Western District of Missouri," and calling their account "merely speculation pulled from the ether."

"The Court recited the very proceeding it said had not been identified." (No. 2:26-cv-05207, Dkt. 47 at 17, Page ID #:1209.)

C. One Fabricated Reason, Recast at Every Stage

Petitioner's rights did not depend on his satisfaction with anyone. They attached when the Government identified Greenway as a victim of the offenses it was investigating, and the duty to accord them fell on the officers "engaged in the detection, investigation, or prosecution of crime." 18 U.S.C. § 3771(c)(1); *see* Attorney General Guidelines for Victim and Witness Assistance, Art. III.B.4, at 13 (2022 ed.) (Department responsibilities "begin as soon as possible after the detection of a crime," generally "the opening of a criminal investigation"). Those rights were suspended on a fabricated court ruling. The restitution they carried is mandatory for an offense committed by fraud or deceit. 18 U.S.C. § 3663A(a)(1), (c)(1)(A)(ii). And the reason given for the suspension has never stayed the same. The Rule 60(d)(3) motion Respondent Judge decided on November 4, 2026 traced it: "One fabricated reason, recast three times, differently each time. None is true." (No. 2:17-cv-07748, Dkt. 28 at 26, Page ID #:834.)

- **October 28, 2016 (Agent Gibson).** A court "found in favor of Selakovic against Greenway Nutrients in regards to the assertion of the Greenway trademark," so the agency was "bound by decision of the court." (No. 2:26-cv-05207, Dkt. 9, Ex. I; No. 2:17-cv-07748, Dkt. 28 at 26, Page ID #:834.)
- **August 2017 (DHS official Russell Simons, after speaking with Agent Gibson).** Petitioner must return to civil court because "the standing decision left the validity of Plaintiffs' trademark ownership at issue." (No. 2:17-cv-07748, Dkt. 13 at 4, Page ID #:212; Dkt. 28 at 29, Page ID #:837.)
- **January 29, 2018 (the Office, under United States Attorney Hanna).** The Colorado dismissal "leaves plaintiffs' valid ownership of Greenway's trademarks in doubt"; ICE and USAO-MO, "in their discretion, made the reasoned decision that they would not resume their investigation"; and

"Greenway determined that it could not prevail." (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. (*Id.*, Dkt. 9-2, Ex. 3 at 25, Page ID #:172.) And "one cannot make a discretionary decision whether to 'resume' a DHS criminal investigation that never began." (*Id.*, Dkt. 28 at 28, Page ID #:836.)

- **July 19, 2021 (the Office, under Acting United States Attorney Wilkison).** The civil suit "did not reach a judgment on the merits," and the notice was moved back to "August 2015," when Agent Gibson's own June and August 2015 emails confirmed the investigation was continuing. (No. 2:17-cv-07748, Dkt. 15 at 3, Page ID #:321; Dkt. 28 at 26, Page ID #:834.)
- **August 5, 2026 (the Office, in a filing naming First Assistant United States Attorney Essayli).** Petitioner's claims were "ill-fated" and "repeatedly rejected," and the 2017 judgment was described as "dismissing with prejudice" Petitioner's complaint, without disclosing that the court had dismissed for want of subject-matter jurisdiction, while "the government does not address them here in substance." (*McCormick*, ECF No. 864 at 4–5, Page ID #:11427–11428; No. 2:17-cv-07748, Dkt. 28 at 40, Page ID #:848.) That filing has not been corrected or withdrawn. (*Id.*, Dkt. 28 at 48, Page ID #:856; Dkt. 52 at 13, Page ID #:1172.)

The Office's own January 29, 2018 motion told the Court 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 that more than $20 million had been recovered. (No. 2:17-cv-07748, Dkt. 9 at 10, Page ID #:131.) The 2018 Order recited those facts, citing the Government's motion. (*Id.*, Dkt. 13 at 2, Page ID #:210.) The investigation was real. The ruling used to suspend it was not. (*Id.*, Dkt. 28 at 20, Page ID #:828.)

On November 4, 2026, with that motion before him, Respondent Judge described the 2017 action as one in which "Plaintiff was dissatisfied with how the Defendants' agents handled the case and allegedly failed to assist him despite him and Greenway Nutrients being victims of the criminal counterfeiting." (Ex. HH at 2, Page ID #:1467.) The description acknowledges the victims. It omits the fabrication that suspended their rights, which the motion before him documented and which he accepted "as true." (*Id.* at 3.)

D. The False Ryan Name Substitution, and What It Cost

The Office told the Court in 2018 that Petitioner's evidence against Greenway's former attorney, Michael J. Ryan, was "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." (No. 2:17-cv-07748, Dkt. 9 at 18 n.11, Page ID #:139.) The 2013 communications went to Thomas F. Ryan, a different man, and the exhibit the Office swore to never mentions Michael J. Ryan. (*Id.*, Dkt. 9-2, Ex. 4, Page ID #:174–191; Dkt. 14-1 ¶ 31, Page ID #:261.) The 2018 Order adopted the premise, finding that Plaintiffs "had knowledge of their 'new information' regarding Greenway's attorney as early as June 2013." (*Id.*, Dkt. 13 at 16 n.6, Page ID #:224.)

The evidence was not old. It was a Florida corporate filing dated March 31, 2016, naming Michael J. Ryan, who had signed Greenway's non-disclosure agreement, as registered agent of Selakovic's HPC Acquisitions, Inc. (later Vegalab, Inc.), with his own firm's address as its principal office. Petitioner learned of it in March 2017 and delivered it to Agent Gibson on April 11, 2017. (No. 2:17-cv-07748, Dkt. 28 at 36, Page ID #:844; *id.*, Dkt. 13 at 4, Page ID #:212.) A public record created in 2016 cannot have been known in 2013.

The lead the substitution buried was not trivial. Greenway pursued it in *Greenway Nutrients, Inc. v. Selakovic*, No. 9:18-cv-81104 (S.D. Fla.), where its claims against Michael J. Ryan, James D. Ryan, their firm, and Vegalab, Inc.

survived dismissal (*id.*, Dkt. 81), and Greenway documented diverted product with a retail value exceeding $100 million, for which it has never been compensated (*id.*, Dkt. 102 at 65). (No. 2:17-cv-07748, Dkt. 28 at 32–33, 36, Page ID #:840–841, #:844.) It recovered nothing. On March 29, 2019, Greenway's counsel in that case, John Pierce, moved to withdraw; that same day, Virage SPV-1 executed a $28.5 million loan to Pierce's firm, collateralized against its case portfolio. Greenway later alleged, in a complaint certified under Rule 11, that the funding was used "as a pay-off or bribe to induce Pierce" and his firm "to undermine and abandon Greenway's meritorious Florida lawsuit," and no defendant denied those allegations on the merits. (No. 2:17-cv-07748, Dkt. 47 at 13–14, Page ID #:1117–1118; Dkt. 52 at 20, Page ID #:1179; *Greenway Nutrients, Inc. v. Pierce*, No. 2:22-cv-03322, Dkt. 1-1.)

These are the losses the false substitution left uncompensated, and they are losses within the Mandatory Victims Restitution Act. 18 U.S.C. § 3663A(b)(1). Every fact in this subsection was before Respondent Judge in No. 2:17-cv-07748, in the motion he denied and in the notices he struck. (No. 2:17-cv-07748, Dkts. 28, 47, 52; Ex. HH at 3–4.)

E. The 2021 Order Supplied a Defense the Government Never Raised

The only ruling ever entered on Petitioner's crime-victim rights before 2026 rests on a defense no party asserted. Petitioner filed his first crime-victim petition in March 2021. The Office did not appear, did not answer, and filed nothing. On March 22, 2021, without requiring any response from the Office, the court issued an order to show cause on its own motion, directing the victims to show why their petition was not barred by issue and claim preclusion:

> "On March 22, 2021 the Court issued an Order to Show Cause why this matter should not similarly be dismissed for failure to state a claim under 18 U.S.C. § 3771. Specifically Plaintiffs were ordered to show cause why the relief sought in the Complaint is not barred by issue and claim preclusion as a result of the Court's dismissal of Plaintiff's claims with prejudice in Gustavo Escamilla et al v. Department of Homeland Security, et al., 17-CV-07748-ODW (MRWx) (C.D. Cal April 4, 2018)." (No. 2:21-cv-01910, Dkt. 10 at 1, Page ID #:293.)

Preclusion is a party's defense, not the court's. "Claim preclusion, like issue preclusion, is an affirmative defense," and "[o]rdinarily, it is incumbent on the defendant to plead and prove such a defense." *Taylor v. Sturgell*, 553 U.S. 880, 907 (2008); Fed. R. Civ. P. 8(c)(1). Courts "rely on the parties to frame the issues for decision" and act as "neutral arbiter of matters the parties present." *Greenlaw v. United States*, 554 U.S. 237, 243 (2008). The Government never pleaded preclusion, never argued it, and never appeared to assert it. The defense was the court's own. (No. 2:21-cv-01910, Dkt. 10; No. 2:17-cv-07748, Dkt. 54 at 9–10, Page ID #:1372–1373; *id.*, Ex. A at 2, Page ID #:1392.)

The defense also had nothing to rest on. The judgment it invoked dismissed claims under 42 U.S.C. § 1983 and the Federal Tort Claims Act for lack of subject-matter jurisdiction. (No. 2:17-cv-07748, Dkt. 13 at 10, 13, Page ID #:218, #:221.) The 2017 action asserted no right under the Crime Victims' Rights Act, so no issue under the Act had been decided. And a dismissal for lack of jurisdiction is not an adjudication on the merits; it must be without prejudice and cannot bar a later claim. *Costello v. United States*, 365 U.S. 265, 285 (1961); Fed. R. Civ. P. 41(b); *Kelly v. Fleetwood Enters., Inc.*, 377 F.3d 1034, 1036 (9th Cir. 2004). A court that has held it has no power over a controversy has decided nothing about it. (No. 2:17-cv-07748, Dkt. 54 at 10, Page ID #:1373.) The one thing the 2018 order did decide was that the Court lacked jurisdiction over those § 1983 and Federal Tort Claims Act claims. It decided nothing about a petition under 18 U.S.C. § 3771(d)(3), which

rests on a different grant of authority. There was no prior decision of any issue under the Act for the court to notice, on its own motion or otherwise.

The victims answered on March 29, 2021, filing the Government's own declarations and showing that they were false. (No. 2:21-cv-01910, Dkt. 9.) Four days later, the court wrote: "The Court reaffirms its April 4, 2018 Order dismissing this matter with prejudice. For the same reasons, the Court discharges the OSC and sua sponte dismisses the Victim's Emergency Petition." (*Id.*, Dkt. 10 at 2, Page ID #:294.) The only "reasons" were those of the 2018 order, which had held there was no jurisdiction. In the same order, the court invoked an "earlier determination that Plaintiffs have supplied no basis to establish any rights under the Crime Victims' Rights Act" that no court had made, cited the 2017 action under a case number that does not exist, "17-cv-07747," and called the victims' account of the sealed Missouri proceedings "merely speculation pulled from the ether." (*Id.* at 1–2, Page ID #:293–294; No. 2:17-cv-07748, Dkt. 54, Ex. A at 2, Page ID #:1392.)

Everything that followed was built on that order. In July 2021, the Office adopted it: the court had "correctly noted that plaintiffs could not identify any criminal proceeding supporting their rights as victims." (No. 2:17-cv-07748, Dkt. 15 at 2–3, Page ID #:320–321.) In August 2026, the Office cited it to the Chief Judge as an order "denying Mr. Escamilla's 2021 enforcement petition alleging violations of the CVRA." (*McCormick*, Dkt. 864 at 4–5, Page ID #:11427–11428.) The Ninth Circuit affirmed in March 2022, on law-of-the-case grounds. Three years later, *In re Davis* settled the question for mandatory restitution, confirming the § 3771(d)(3) pathway and the § 3664(d)(5) petition on which Petitioner now proceeds. (No. 2:26-cv-05207, Dkt. 47 at 23–24, Page ID #:1215–1216.) No court has ever examined whether the preclusion defense on which the 2021 dismissal rests was available to a court that raised it for an absent party, from a judgment that decided nothing.

Petitioner placed this sequence before Respondent Judge on October 30, 2026, together with his complaint of judicial misconduct to the Ninth Circuit, which states that the court, "[r]equiring no response from the U.S. Attorney's Office, . . . ordered the victims, on his own motion, to show cause why the petition should not be dismissed for failure to state a claim, raising a defense the government never raised." (No. 2:17-cv-07748, Dkt. 54, Ex. A at 2, Page ID #:1392.) Five days later, Respondent Judge struck the filing that presented it, and in the same order denied Petitioner's motion on untimeliness, a ground the Office, having filed nothing, never raised. (Ex. HH at 3–4.) The 2021 sequence was repeated: no response required of the Government, a defense supplied by the court, and a victim's filing disposed of without its substance being reached. Each repetition denied Petitioner the right to be reasonably heard, 18 U.S.C. § 3771(a)(4), and the right to be treated with fairness, § 3771(a)(8), and each disregarded the Court's duty to ensure that he is afforded those rights, § 3771(b)(1).

F. Placed Before the Court Five Times in 2021, and Never Addressed

The same documented information was placed before the presiding judge five times over seven months in 2021, and each time disposed of without being addressed. (No. 2:26-cv-05207, Dkt. 47 at 18–20, Page ID #:1210–1212.)

First (March 29, 2021). Counsel's response to the order to show cause placed the misconduct before the court under a heading stating that "U.S. Attorneys provided this Court with a fabricated narrative and filed false and materially misleading declarations and pleadings." (No. 2:21-cv-01910, Dkt. 9; No. 2:26-cv-05207, Dkt. 47 at 18–19, Page ID #:1210–1211.)

Second (April 2, 2021). The Government did not appear and filed nothing; the court dismissed sua sponte on a preclusion ground drawn from the 2018 jurisdictional dismissal, without addressing the uncontested information. (No. 2:21-cv-01910, Dkt. 10; No. 2:26-cv-05207, Dkt. 47 at 19, Page ID #:1211.)

Third (July 12, 2021). Petitioner, through counsel, placed the same documented misconduct before the court, quoted the governing judicial-conduct canon, and gave notice of the forthcoming Rule 60(d)(3) motion. (No. 2:17-cv-07748, Dkts. 14, 14-1; No. 2:26-cv-05207, Dkt. 47 at 19, Page ID #:1211.)

Fourth (September 18–20, 2021). The Rule 60(d)(3) motion documenting the same information was struck for failure to comply with Local Rule 7-3. Counsel then initiated the conference and, after two weeks without a response from the Office, refiled. (No. 2:17-cv-07748, Dkts. 18, 20; No. 2:26-cv-05207, Dkt. 47 at 19, Page ID #:1211.)

Fifth (October 18 to November 1, 2021). The refiled motion, the Office's "assuming arguendo" opposition, and counsel's reply. The motion was struck. (No. 2:17-cv-07748, Dkts. 21, 23, 24, 25; No. 2:26-cv-05207, Dkt. 47 at 20, Page ID #:1212.)

From the April 4, 2018 dismissal until the presiding judge recused himself on August 26, 2026, no order of this District addressed the fabrication on its merits. When it reached Respondent Judge on November 4, 2026, he accepted it "as true" and addressed it no further. (Ex. HH at 3.)

G. Never Reached on the Merits — and Accepted "As True"

No court has ever adjudicated Petitioner's rights under the Crime Victims' Rights Act on the merits. The 2018 dismissal in No. 2:17-cv-07748 was a dismissal of claims under 42 U.S.C. § 1983 and the Federal Tort Claims Act for lack of subject-matter jurisdiction. (Ex. HH at 2.) A dismissal for lack of jurisdiction is not an adjudication on the merits. *Costello v. United States*, 365 U.S. 265, 285 (1961). The 2021 order in No. 2:21-cv-01910 reaffirmed that jurisdictional ruling. The fraud motions were struck on procedure. On November 4, 2026, Respondent Judge denied the renewed motion as untimely, and held it would fail "[e]ven accepting Plaintiff's late-presented allegations of fraud on the court as true," because fraud could not cure the jurisdictional defect in a § 1983 action. (Ex. HH at 3.) That ruling

decided nothing about the Crime Victims' Rights Act. The rights asserted in Nos. 2:26-cv-05207 and 2:26-cv-09383 have never been decided by anyone.

At each stage, the same two things happened together. The Office republished the fabrication; the Court declined to correct it. The Office raised the victim's status and used it against him; the Court let it stand. The Office declined to deny a single documented act on the merits; the Court struck the motion that documented them, without reaching one. (Ex. BB at 55–56.) In 2026, the Office described the result as claims "courts have repeatedly rejected," while conceding that "the government does not address them here in substance." (Ex. AA; ECF No. 864 at 4–5.) A claim is not "repeatedly rejected" on its merits by an office that, in the same breath, declines to address its substance at all.

H. The Conduct Is the Conduct Described in Lanuza v. Love

The Ninth Circuit has said what a court must do with fabricated evidence: remedying it "falls within the natural ambit of the judiciary's authority." *Lanuza v. Love*, 899 F.3d 1019, 1033 (9th Cir. 2018). Respondent Judge has accepted the fabrication as true, for purposes of decision, and left the judgment it produced undisturbed. Petitioner does not ask this Court to set aside that judgment here. He asks that the crime-victim petitions which the fabrication never touched be decided.

In *Lanuza v. Love*, a government attorney "intentionally forged and submitted an ostensible government document in an immigration proceeding." 899 F.3d at 1020. The Ninth Circuit saw "no reason to distinguish the due process rights . . . when a government attorney falsifies evidence," *id.* at 1026, described the conduct as an officer of the court who "forged and submitted evidence . . . to deprive an individual of his right to relief," *id.* at 1028, and held that "a court's integrity is compromised by the submission of false evidence," *id.* at 1033. "At its core, this case is about a lie, and all the ways it was used, over several years, to defraud the courts." *Id.* at 1034. "These attorneys represent the United States, and when they act, they speak for our government." *Id.*

Here the false evidence was a court ruling that never existed, reported by the federal agent who had identified the victim, during an active criminal investigation, and carried into this District by the attorneys who represent the United States. It was used to suspend the investigation as to the victim, to defeat his civil-rights action, and to deny his victim status and restitution. It has been documented, sworn, and undenied for more than five years. It has been placed before Respondent Judge in every case he holds. (No. 2:17-cv-07748, Dkt. 28 at 19–20, Page ID #:827–828; No. 2:26-cv-05207, Dkts. 47, 50, 51; No. 2:26-cv-09383, Dkt. 1 at 41–59.) And it is the reason the victim's rights remain unaccorded today.

XII. A REQUEST TO BE PROTECTED FROM A DOCUMENTED ENTERPRISE HAS BEEN STRUCK, AND THEN LEFT UNDECIDED

Among the filings struck under Local Rule 7-3 was one the Crime Victims' Rights Act guarantees above nearly all others: a request for protection. 18 U.S.C. § 3771(a)(1); 34 U.S.C. § 20141(c)(2). Petitioner asked to be protected from Group America, a transnational criminal enterprise with a documented history of witness intimidation, bribery, and murder, whose members have been documented tampering with the jury in the federal racketeering trial of John Gotti. (Ex. Y; Ex. BB at 68–70.) The primary bad actor in the underlying scheme, David Dragan Selakovic, is the brother of Nikola Selakovic, Serbia's Minister of Foreign Affairs. (Ex. BB at 69.)

The Government has known of this threat, in writing, for more than five years. Petitioner notified Agent Gibson on April 24, 2020, and invoked his right to protection. (Ex. O.) He raised the danger again in his September and October 2021 Rule 60(d)(3) motions, in his June 2025 complaint to DHS's Office of Inspector General, and in his January 12, 2026 written request to the Office, which recounted three men attempting to breach his warehouse at night and unmarked vehicles at his residence. (No. 2:26-cv-05207, Dkt. 9, Ex. R, Page ID #:694–703; Ex. BB at 70–

71.) The Government never responded, never opposed the request on its merits, and never afforded a single measure of protection.

On August 14 and August 18, 2026, the Motion for Reasonable Protection was struck for failure to confer with a party that had disclaimed service and refused to appear. (No. 2:26-cv-05207, Dkts. 35, 43.) On August 26, 2026, Petitioner applied again for reasonable protection in No. 2:26-cv-09383. (No. 2:26-cv-09383, Dkt. 9.) On September 23, 2026, he documented the scale and ongoing danger of the enterprise. (*Id.*, Dkt. 28.) Respondent Judge has held that application since September 14, 2026. He has not decided it. A right to be reasonably protected is not discharged by the passage of time or the accumulation of unanswered notices. It is discharged only by protection. *See* Attorney General Guidelines, Art. V.C commentary, at 58 (personnel "should immediately report articulable concerns about victim safety and reports of threats to the lead case agent").

XIII. THE RELATED-CASE DETERMINATION HAS NEVER BEEN MADE

Petitioner first raised these issues on May 14, 2026, in his Emergency Petition, filed with a Notice of Related Cases that designated *United States v. McCormick*, No. 2:20-CR-00346(B)-DMG, and invoked General Order 08-05, § 5.2. (No. 2:26-cv-05207, Dkt. 4.) That determination is committed to the judge of the first-filed case, Chief Judge Dolly M. Gee. She never had the opportunity to make it. On May 22, 2026, before any § 5.2 determination, the action was transferred to the prior judge as related to the 2017 civil-rights action Petitioner had disclaimed, by an order the prior judge signed. (No. 2:26-cv-05207, Dkt. 11; Ex. BB at 73–75.)

The entanglement that determination would examine is documented. The same Office sits on both sides: the fabrication was adopted under former United States Attorney Nicola T. Hanna, republished and recast under Acting United States Attorney Tracy L. Wilkison, and invoked in August 2026 in *McCormick* in a filing

naming First Assistant United States Attorney Bilal A. Essayli. One institution, one fabrication, carried across a decade and three United States Attorneys. (Ex. BB at 75–76; No. 2:17-cv-07748, Dkt. 28 at 39, Page ID #:847.) The same relatedness question has been briefed before Chief Judge Gee. (*McCormick*, Dkts. 861, 862.)

Petitioner asked, as separate relief, that the related-case processing "be corrected to address the related case designated in Petitioner's Notice of Related Cases." (No. 2:26-cv-05207, Dkt. 47 at 38, Page ID #:1230.) That request did not depend on who presided, and the prior judge's recusal did not moot it. Respondent Judge denied the entire application as moot. (Dkt. 53.) The referral has never been performed. Petitioner asks this Court to order that it be performed. (Ex. BB at 77–78.)

XIV. IN RE DAVIS: EACH ELEMENT IS SATISFIED ON THE RECORD BEFORE RESPONDENT JUDGE

The pathway Petitioner invokes is not a theory. It is the settled law of this Circuit, binding on every district court in it, including Respondent Judge's. *In re Davis*, Nos. 24-3090 & 24-3092, 146 F.4th 710 (9th Cir. 2025) (as amended Aug. 1, 2025), holds that 18 U.S.C. § 3664(d)(5) authorizes a crime victim to petition for an amended restitution order where the victim "subsequently discovers further losses," that denial of such relief on a qualifying record is legal error reviewable by mandamus, and that § 3771(d)(5)'s procedural limitations do not apply. (Ex. BB at 78–82.)

Element One — "No prosecution is underway." The Operation Software Slashers prosecution of Selakovic and Blackburn was filed under seal in the Western District of Missouri in or about January 2015. No official has ever disclosed to Petitioner whether it remains active or whether it resulted in a deferred-prosecution agreement, a plea, or a restitution order. Under § 3771(d)(3)'s "no prosecution is underway" clause, the rights may be asserted in the district where the

crime occurred: here, the Central District of California, where the predicate offenses caused harm to Petitioner and Greenway.

Element Two — A § 3664(d)(5) petition is "any motion asserting a victim's right." Petitioner's request for the relief § 3664(d)(5) authorizes is before Respondent Judge in both pending petitions as a "motion asserting a victim's right," conferring both jurisdiction and the obligation to decide it forthwith. *Davis*, slip op. at 22–24.

Element Three — "Subsequently discovered further losses." *Davis* holds that "further losses" include losses the victim always knew of but did not know had been omitted from the restitution determination. *Id.* at 32. Petitioner has always known the magnitude of Greenway's losses. What he has never known, because the Government has never disclosed it, is whether those losses were included in, excluded from, or never addressed by any Operation Software Slashers restitution determination.

Element Four — Good cause. Under *Davis*, victims "may rely on the government to assert their rights to restitution," and an omission caused by the Government's errors "likely amounts to good cause." *Id.* Petitioner's showing exceeds that recognized in *Davis*. The Government told him in March 2015 that Greenway would be eligible for compensation from an established victims' fund, and then suspended the investigation as to Greenway on a court ruling that did not exist. Where Government error suffices, Government misrepresentation that manufactured the victim's exclusion establishes good cause a fortiori.

Element Five — Timeliness. The sixty-day period runs from the victim's discovery. It has not begun to run, because the Government has never disclosed whether any restitution determination was made. A period that has not started cannot be missed. The statute's time directives do not "deprive the court of the power to order restitution." *Id.* at 34 (quoting *Dolan v. United States*, 560 U.S. 605, 611 (2010)). And § 3771(d)(5)'s limitations do not apply: in exempting restitution

petitions, "the Crime Victims' Rights Act elevated crime victims' rights above finality concerns in the restitution context." *Id.* at 28.

That is the framework Respondent Judge is bound to apply. Confronted with a victim asserting exactly the rights *Davis* makes enforceable, he has not decided the matter forthwith, has not reached the restitution question, and has not acknowledged the controlling authority. A district court is not free to leave binding Circuit precedent unapplied, or to substitute warnings about page limits for a statutory command the Ninth Circuit has held governs these very motions.

XV. THE MANDATORY VICTIMS RESTITUTION ACT: BOTH DUTIES WERE OWED, AND NEITHER WAS PERFORMED

The Mandatory Victims Restitution Act, 18 U.S.C. §§ 3663A and 3664, makes restitution mandatory for "any offense committed by fraud or deceit." 18 U.S.C. § 3663A(a)(1), (c)(1)(A)(ii); *see United States v. Kovall*, 857 F.3d 1060, 1064 (9th Cir. 2017). The offenses committed against Greenway, including trademark counterfeiting, trade-secret theft, and securities fraud, are such offenses. Under § 3663A(b)(1)(B), restitution must equal the greater of the value of the property on the date of the loss or on the date of sentencing. Under § 3664(d)(1), the attorney for the Government must consult with all identified victims before submitting restitution amounts. Under § 3664(g)(1), no victim is required to participate in any phase of a restitution order. Neither obligation was discharged as to Petitioner. The Government has never disclosed whether any restitution determination, order, or victims'-fund determination exists. (Ex. BB at 82–83.)

The offenses of which Greenway was a victim were offenses "committed by fraud or deceit," for which restitution is mandatory. 18 U.S.C. § 3663A(c)(1)(A)(ii). No victim is required to participate in any phase of a restitution order. *Id.* § 3664(g)(1). Under *Davis*, a victim's § 3664(d)(5) petition is a motion asserting a victim's right; government institutional failure supplies good cause; and the sixty-day period runs from discovery. *Davis*, slip op. at 22–24, 32. The Department's Guidelines

confirm that the obligation to consider restitution "begins before charging a case and continues until victims have been paid in full," that "[w]henever possible, prosecutors should use civil or criminal asset forfeiture to recover assets to return to victims of crime," and that remission of forfeited funds "is particularly useful when there are victims of offenses that underlie civil judicial and administrative forfeitures." Attorney General Guidelines for Victim and Witness Assistance, Art. V.H, at 64; Art. V.H.2, at 68 (2022 ed.). The Operation Software Slashers forfeiture is a civil judicial forfeiture. (No. 2:26-cv-05207, Dkt. 51, Ex. C.) The Government never told the victim it existed. Petitioner incorporates the *Davis* and MVRA analysis of his August 21, 2026 Petition. (Ex. BB at 78–83.) Petitioner asserts these rights here in the alternative, and only to the extent they remain undecided in Nos. 2:26-cv-05207 and 2:26-cv-09383 when this Petition is decided. He does not seek a double recovery or inconsistent rulings. He seeks a ruling.

A mandatory restitution obligation attached to Petitioner as a documented federal crime victim, and a mandatory procedural framework governed its determination. Both were owed. Neither was performed. The right to full and timely restitution the MVRA secures, the same right guaranteed by 18 U.S.C. § 3771(a)(6), remains unhonored, and is now pending, undecided, before Respondent Judge.

XVI. EACH MISIDENTIFICATION OF A FEDERALLY IDENTIFIED VICTIM IS A SEPARATE DENIAL OF FAIRNESS, DIGNITY, AND PROTECTION (18 U.S.C. § 3771(a)(1), (a)(8), (c)(1))

The Government identified Greenway as a Lead Victim in March 2015. Nothing in the Crime Victims' Rights Act conditions that status on success in civil litigation. Nor does anything in the Attorney General Guidelines for Victim and Witness Assistance, which direct the investigating agency to "identify the victims of the crime" (Art. IV.E) and Department personnel to "identify victims of a crime, notify them of their rights, and offer them services" (Art. II.C), and which provide that the obligation to consider restitution "begins before charging a case" (Art. V.H). Nothing in the Act, the Guidelines, or the Justice Manual permits a federal

officer to report a court ruling that no court made. From October 2016 through November 2026, officers and attorneys of the United States nonetheless told Petitioner, and three federal judges, that he was not a victim:

- **October 28 and November 21, 2016.** Agent Gibson: a court "found in favor of Selakovic against Greenway Nutrients in regards to the assertion of the Greenway trademark"; DHS "cannot move forward with any investigation involving your trademark." (No. 2:17-cv-07748, Dkt. 1, Exs. 9–10, Page ID #:50, #:63; Ex. QQ.)
- **August 4, 2017.** DHS official Russell Simons replaced the fabricated ruling with a trademark-"ownership" pretext. (No. 2:17-cv-07748, Dkt. 1 ¶¶ 42–60, Page ID #:12–16.)
- **January 29, 2018.** The Office: Greenway's ownership of its trademarks was "in doubt"; ICE had "no electronic or hardcopy record" of any complaint; Petitioner's discovery was "actually rather old." (No. 2:17-cv-07748, Dkt. 9 at 11, 18 n.11, Page ID #:132, #:139; Dkts. 9-1, 9-2.)
- **January 29, 2018.** The Office: ICE and USAO-MO "made the reasoned decision that they would not resume their investigation," and "Greenway determined that it could not prevail." (No. 2:17-cv-07748, Dkt. 9 at 19, 22, Page ID #:140, #:143.)
- **July 19, 2021.** The Office: "plaintiffs could not identify any criminal proceeding supporting their rights as victims." (No. 2:17-cv-07748, Dkt. 15 at 2–3, Page ID #:320–321.)
- **October 25, 2021.** The Office: "assuming arguendo" a fraud on the court existed, "it would not 'affect the outcome of the case.'" (No. 2:17-cv-07748, Dkt. 23 at 5, Page ID #:753.)
- **December 31, 2025.** The Office's Victim-Witness staff: the matter "seems to be related to two civil cases which were dismissed." (No. 2:26-cv-05207, Dkt. 44 at 24, Page ID #:1146.)

- **January 28 and February 5, 2026.** "It does not appear that you are an identified crime victim in a federal criminal proceeding. . . . We cannot assist you." (No. 2:26-cv-09383, Dkt. 2-1, Exs. S–T, Page ID #:383–391.)
- **June 2, 2026.** The Office acknowledged receipt of the Petition, then disclaimed service. (No. 2:26-cv-05207, Dkt. 44 at 19, Page ID #:1141.)
- **August 5, 2026.** The Office: Petitioner's claims were "ill-fated," "repeatedly rejected," and his counsel's representation "purported," while "the government does not address them here in substance"; and the 2017 judgment "dismissing with prejudice," without disclosing that it was jurisdictional. (Ex. AA; *United States v. McCormick*, No. 2:20-cr-00346(B)-DMG, Doc. 864 at 4–5, Page ID #:11427–11428.) Not corrected or withdrawn since. (No. 2:17-cv-07748, Dkt. 52 at 13, Page ID #:1172.)
- **October 16, 2026.** No opposition to the Rule 60(d)(3) motion by the deadline the Office itself was given. (No. 2:17-cv-07748, Dkt. 47 at 21–22, Page ID #:1122–1123.)
- **October 21, October 28, and November 1, 2026.** No response to written questions, including whether the Office intends to respond to either crime-victim petition, cooperate with the Inspector General's review, or correct or escalate the misconduct described in the Rule 60(d)(3) motion. The October 28 letter set a 10:00 a.m. deadline the next day and stated what would follow; no one answered, acknowledged it, or asked for more time. (No. 2:17-cv-07748, Dkt. 44, Ex. A; Dkt. 52 at 6–7, Page ID #:1165–1166, Ex. A; Dkt. 56, Ex. A.)

Each statement was made after the Government had identified Petitioner as a victim, and none has been corrected. Each was a separate failure to treat him "with fairness and with respect for [his] dignity," § 3771(a)(8), and to make best efforts to accord his rights, § 3771(c)(1). Each left him without the protection the Government told him in 2015 it would provide, § 3771(a)(1); 34 U.S.C. § 20141(c)(2). A

government officer who uses fabricated evidence "to deprive an individual of his right to relief" commits the wrong *Lanuza v. Love*, 899 F.3d 1019, 1028 (9th Cir. 2018), condemned.

XVII. THIS COURT CAN GRANT THE RELIEF REQUESTED

The relief requested is within this Court's authority under 18 U.S.C. § 3771(d)(3):

- **Declaratory relief.** As relief on this § 3771(d)(3) motion, the Court may declare whether § 3771(d)(3)'s forthwith mandate governs the applications pending in Nos. 2:26-cv-05207 and 2:26-cv-09383, and whether the delay to date satisfies it.
- **Relief against the United States.** The Court may order the United States, which is a party here, to appear and state its position on each right asserted, forthwith, and to make the disclosures § 3771(c)(1) and (a)(2) require.
- **Referral to the Chief Judge.** The Court may refer the matter to the Chief Judge, who holds the related criminal case and has authority over the division of business and assignment of cases under 28 U.S.C. § 137 and the Court's General Orders, for such reassignment or other action as the Chief Judge finds appropriate, and for the § 5.2 determination that has never been made.
- **Decision of the rights themselves.** Under § 3771(d)(3) and *Davis*, the rights may be asserted in this Court. To the extent they remain undecided elsewhere, this Court may decide them.

If the Court denies the relief sought, Petitioner will petition the Court of Appeals for a writ of mandamus, as § 3771(d)(3) provides. Petitioner preserves that right, and preserves the right to seek mandamus directly in the Court of Appeals as to the delay in Nos. 2:26-cv-05207 and 2:26-cv-09383.

XVIII. PRAYER FOR RELIEF

WHEREFORE, pursuant to 18 U.S.C. § 3771(d)(3), 18 U.S.C. § 3771(a), 18 U.S.C. § 3771(e)(2)(A), 18 U.S.C. § 3663A(c)(1)(A)(ii) (offenses committed by

fraud or deceit), 18 U.S.C. §§ 3664(d)(1) and 3664(d)(5) (as construed by *In re Davis*, 146 F.4th 710 (9th Cir. 2025)), and 34 U.S.C. § 20141, Petitioner respectfully requests that this Court enter an order:

1. TAKING UP AND DECIDING this Petition forthwith pursuant to 18 U.S.C. § 3771(d)(3), the United States District Court for the Central District of California being the district in which the relevant conduct occurred and continued between July 2021 and November 2026;
2. RECOGNIZING Petitioner's status as a federal crime victim under 18 U.S.C. § 3771(e)(2)(A) — directly and proximately harmed by the original federal offenses formally identified by DHS in March 2015 — and recognizing that Petitioner's rights under the Crime Victims' Rights Act have never been discharged or accorded;
3. PROVIDING Petitioner reasonable protection from the accused pursuant to 18 U.S.C. § 3771(a)(1) and 34 U.S.C. § 20141(c)(2), by directing the United States, through the appropriate components of the Department of Justice and its investigative agencies, to afford Petitioner the reasonable protection the Crime Victims' Rights Act guarantees against the documented enterprise from which Petitioner sought protection, and to report to the Court, within fourteen days, the measures undertaken;
4. DECLARING that Local Rules 6-1 and 7-3 and the Court's generative-artificial-intelligence order are inapplicable to a Crime Victims' Rights Act enforcement action that 18 U.S.C. § 3771(d)(3) commands be decided forthwith, and that the repeated striking of Petitioner's filings on those grounds neither reached nor extinguished the rights asserted;
5. DIRECTING the United States, through the U.S. Attorney's Office for the Central District of California and any other appropriate component of the Department of Justice, to provide Petitioner — within fourteen days of this Court's order — written notice of his rights under 18 U.S.C. § 3771 and the

Attorney General Guidelines for Victim and Witness Assistance, and a meaningful opportunity to confer with the attorney for the Government concerning the matters identified in this Petition;

6. DIRECTING the United States to disclose to Petitioner — within fourteen days of this Court's order — pursuant to 18 U.S.C. § 3771(a)(2) and 18 U.S.C. §§ 3663A, 3664(d)(1), and 3664(d)(5), whether any criminal prosecution, sentencing, forfeiture, restitution determination, restitution order, amended plea agreement, deferred-prosecution agreement, non-prosecution agreement, restitution order, or victims'-fund determination has been entered or is currently pending in Operation Software Slashers proceedings, relating to or arising from the conduct against Petitioner and Greenway Nutrients, Inc. that gave rise to Petitioner's federal crime-victim status under 18 U.S.C. § 3771(e)(2)(A), and to identify the case number, docket status, and victim-rights status of any such proceeding;
7. ORDERING that the mandatory determination under General Order 08-05, § 5.2 be performed, and the related-case relatedness question referred to the Honorable Chief Judge Dolly M. Gee, the judge to whom the first-filed designated case, *United States v. McCormick*, No. 2:20-CR-00346(B)-DMG, is assigned;
8. REFERRING any appropriate compliance issue under 18 U.S.C. § 3771(f) to the Department of Justice Victims' Rights Ombudsman or other proper supervisory authority, if this Court finds such referral appropriate;
9. DIRECTING that this Petition be assigned to a district judge other than Respondent Judge, who is disqualified under 28 U.S.C. § 455(b)(5)(i) and (e);
10. DECLARING that each of the applications pending in No. 2:26-cv-05207 (Dkt. 50) and No. 2:26-cv-09383 (Dkts. 9, 15, 18, 23, 26, 37, 44), and each Petition, is a "motion asserting a victim's right" that must be taken up and

decided forthwith under 18 U.S.C. § 3771(d)(3), and that the delay to date in deciding them violates 18 U.S.C. § 3771(d)(3), (a)(7), and (b)(1);

11. DECLARING that the striking of Petitioner's filings on November 4, 2026 as "unduly burdensome" neither reached nor extinguished the rights asserted;

12. ORDERING the United States to appear in this action and, within seven days, state its position on each right asserted here and in Nos. 2:26-cv-05207 and 2:26-cv-09383;

13. REFERRING this matter, Nos. 2:26-cv-05207 and 2:26-cv-09383, and this Court's findings to the Chief Judge for such reassignment or other action under 28 U.S.C. § 137 and the General Orders as the Chief Judge finds appropriate; and

14. GRANTING such other and further relief, declaratory and prospective, as this Court deems just and proper — Petitioner seeking no damages.

DATED: November 6, 2026

Respectfully submitted,



GUSTAVO ESCAMILLA
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Petitioner in Pro Se

VERIFICATION AND DECLARATION OF GUSTAVO ESCAMILLA

I, Gustavo Escamilla, declare:

1. I am the Petitioner in this action. I have personal knowledge of the facts stated in this declaration and, if called as a witness, could and would testify to them.
2. I have read this Petition. The facts stated in Section V are taken from the dockets of Nos. 2:26-cv-05207-AB and 2:26-cv-09383-AB as they appeared on November 6, 2026, true and correct copies of which are attached as Exhibits CC and DD, and from the orders attached as Exhibits EE through HH.
3. As of the date I sign this declaration, no order has been entered in No. 2:26-cv-05207 other than those shown on Exhibit CC, and no order has been entered in No. 2:26-cv-09383 other than those shown on Exhibit DD. I have received no ruling on any of the applications identified in Section V.D of this Petition.
4. As of the date I sign this declaration, no attorney for the United States has filed an appearance, answer, opposition, or any other document in No. 2:26-cv-05207 or No. 2:26-cv-09383, and, apart from the June 2 and September 3, 2026 letters raising service and the request to be served again described in Section VIII of this Petition, no attorney for the United States has communicated with me about either case.
5. Exhibits A through AA are the exhibits filed in No. 2:26-cv-09383 as Docket No. 2. Exhibits D, J, K, M, and N filed concurrently with this Petition are true and correct copies of those exhibits as filed in No. 2:26-cv-09383, Docket No. 2, and No. 2:26-cv-05207, Docket No. 9. Exhibit BB is my August 21, 2026 Petition in No. 2:26-cv-09383, Docket No. 1. Exhibits LL, QQ, and RR filed concurrently with this Petition are true and correct copies of the

documents described in the Notice of Filing of Exhibits filed concurrently with this Petition; the remaining exhibits are of record as described there.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 6, 2026, at Glendale, California.

DATED: November 6, 2026

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

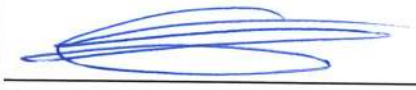
The undersigned certifies the following regarding the use of generative artificial intelligence in the preparation of this filing:

_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: November 6, 2026



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