

No. _____
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2026

IN RE JOSEPH A. CAMMARATA,
Petitioner.

ON PETITION FOR AN ORIGINAL WRIT
OF MANDAMUS UNDER 28 U.S.C. § 1651(a)
AND THIS COURT'S RULE 20 TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF MANDAMUS

JOSEPH A. CAMMARATA
Petitioner, pro se
Register No. 02555-506
FCI Atlanta
Federal Correctional Institution
P.O. Box 150160
Atlanta, Georgia 30315

QUESTIONS PRESENTED

1. Whether this Court should issue the writ where a citizen has been imprisoned for nearly five years, and stripped of more than \$100 million, for conduct this Court unanimously held lawful in *Sprint Communications Co. v. APCC Services, Inc.*, 554 U.S. 269 (2008), such that to punish him for doing what the law plainly allows is “a due process violation of the most basic sort,” *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978); where every forum that could correct the error has refused to reach it, a statutorily disqualified district judge with a documented financial interest in the outcome, a structurally conflicted court of appeals whose Executive Office employs the prosecuting attorney’s spouse and which has neither compelled any responsive brief nor ruled in more than thirty-one months, and a prosecution that has never once contested the facts; and whether, to protect “the fairness, integrity, [and] public reputation of judicial proceedings,” *United States v. Olano*, 507 U.S. 725, 736 (1993), the writ must issue where no other forum remains to review a documented and uncontested miscarriage of justice.

2. Whether this Court should exercise its supervisory power where the Department of Justice prosecuted, and the Securities and Exchange Commission enforced against, conduct this Court unanimously held lawful in *Sprint Communications Co. v. APCC Services, Inc.*, 554 U.S. 269 (2008); where that controlling authority was suppressed, Federal Rule of Criminal Procedure 5(f) was violated, and no court has ever applied it; and where the trial evidence

established that Petitioner's conduct, assigning his own trades to an assignee that filed the class-action settlement claims as the legal beneficial owner, in its own name, and fully disclosed as such, was precisely the conduct *Sprint* holds lawful.

3. Whether a writ of mandamus should issue directing reassignment of Third Circuit No. 24-1381 to a conflict-free forum, where the district judge whose orders are on review is disqualified under 28 U.S.C. § 455(b)(4) (financial interest), § 455(b)(5)(i) (party to related litigation against him), and § 455(a) and § 455(b)(1) (documented personal bias and prejudgment), and where a timely and sufficient affidavit of bias under 28 U.S.C. § 144 was denied by the challenged judge himself without referral to another judge as the statute requires.

4. Whether a writ of mandamus should issue where the Third Circuit is structurally disqualified under 28 U.S.C. § 455(a) by reason of its Executive Office's employment of the prosecuting Commission attorney's spouse as an attorney of that office; where that court has never addressed, denied on the merits, or compelled any response to the documented constitutional, due-process, prosecutorial, and judicial-misconduct claims raised across all four related appeals; and by reason of the court's institutional interest in reviewing its own prior dispositions, and where each of Petitioner's four appeals, Nos. 23-2110, 24-1983, 25-1188, and this No. 24-1381, has been subject to that same conflicted tribunal, contains uncontested constitutional and prosecutorial violations on the face of its record, and is the subject of proceedings now pending in this

Court; and where the Third Circuit's failure to decide No. 24-1381 for more than thirty-one months, during which the Commission has never filed a merits response brief, has missed every deadline it requested, and has never been ordered to respond, constitutes a constructive denial of appellate review satisfying the "no other adequate means" requirement of *Cheney v. United States District Court*, 542 U.S. 367, 380-81 (2004).

**PARTIES TO THE PROCEEDING AND RULE
20.3(a) DESIGNATION**

Petitioner is Joseph A. Cammarata, the Defendant-Appellant in *SEC v. Cammarata*, No. 24-1381 (3d Cir.), and the defendant in the underlying civil enforcement action, *Securities and Exchange Commission v. Cammarata*, No. 2:21-cv-04845-CFK (E.D. Pa.).

Pursuant to this Court's Rule 20.3(a), the respondents are:

1. The United States Court of Appeals for the Third Circuit, the court against which the writ is sought;
2. The Honorable Chad F. Kenney, United States District Judge for the Eastern District of Pennsylvania, whose orders are on review in No. 24-1381 and whose disqualification is the antecedent question the Third Circuit has declined to reach; and
3. The United States Securities and Exchange Commission, the real party in interest and the Plaintiff-Appellee in No. 24-1381.

A certificate of service reflecting service upon each respondent, and upon counsel for the Commission, accompanies this petition.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i
PARTIES TO THE PROCEEDING AND RULE 20.3(a) DESIGNATION.....	v
TABLE OF CONTENTS.....	vii
TABLE OF AUTHORITIES.....	xi
SUMMARY OF ARGUMENT.....	1
RELIEF SOUGHT AND WHY IT IS UNOBTAINABLE ELSEWHERE (RULE 20.3(a)).....	2
THE THRESHOLD MATTER: THIS PETITION IS TIMELY, AND THE ORDER RELIED ON TO SAY OTHERWISE PROVES IT.....	4
WHY THE WRIT IS IN AID OF THIS COURT'S APPELLATE JURISDICTION, AND WHY THE CIRCUMSTANCES ARE EXCEPTIONAL (RULE 20.1).....	6
A. There Was Never a Crime, and This Court Said So in 2008.....	7
B. The Civil Enforcement Action Was a Weaponized Instrument of Bad Faith, and the Record Shows It.....	9
C. The Judge Who Entered Every Order Is Disqualified on Multiple Independent Grounds, and If He Is Disqualified, Everything Falls.....	15

D. The Only Court Asked to Review All of This Employs the Prosecutor’s Wife as an Attorney of Its Executive Office.....	21
E. The Pattern Across All Four Related Appeals.....	22
F. The Failures Have Compounded, and Are Compounding Now.....	26
G. The Asset Freeze Was Used to Strip Petitioner of Counsel of His Choice, a Structural Error.....	30
THE DOCKET ITSELF PROVES THE POINT.....	32
A. The Motions That Would End the Case Have Never Been Adjudicated. The Motions That Move Petitioner’s Money Are Decided in Days.....	33
A Footnote Is Not an Adjudication.....	34
B. The Failure to Serve Petitioner Is on the Face of the Docket, at Both Levels.....	35
C. For the First Time in This Case, the Commission Has Been Ordered to Answer, and Still Did Not Contest the Facts.....	36
CONCLUSION.....	37

INDEX TO APPENDIX

Appendix A. Order of the District Court denying Petitioner’s Motion for Recusal and/or Disqualification of Judge (ECF No. 345), <i>SEC v. Cammarata</i> , No. 2:21-cv-04845-CFK (E.D. Pa. Jan. 22, 2024), ECF No. 348 (order on review in 3d Cir. No. 24-1381).....	1a
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Appendix B. Memorandum of the District Court denying Petitioner’s motion under Fed. R. Civ. P. 12(h)(3) and 60(b), <i>SEC v.</i> <i>Cammarata</i> , No. 2:21-cv-04845-CFK (E.D. Pa. Apr. 1, 2024), ECF No. 372 (order on review in 3d Cir. No. 24-1381).....	2a-7a
Appendix C. Financial Disclosure Reports (Form AO-10) of District Judge Chad F. Kenney, cited pages: report for calendar year 2018, page 4 of 7; report for calendar year 2019, page 5 of 8.....	8a-9a
Appendix D. Defendant’s Motion to Alter or Amend the Judgment Pursuant to Fed. R. Civ. P. 59(e), <i>SEC v. Cammarata</i> , No. 2:21-cv-04845-CFK (E.D. Pa. Sept. 14, 2026), ECF No. 427.....	10a-26a
Appendix E. Defendant’s Reply in Support of His Motion to Alter or Amend the Judgment Pursuant to Fed. R. Civ. P. 59(e), <i>SEC v.</i> <i>Cammarata</i> , No. 2:21-cv-04845-CFK (E.D. Pa. Sept. 28, 2026), ECF No. 431.....	27a-41a

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Aetna Life Insurance Co. v. Lavoie</i> , 475 U.S. 813 (1986).....	21
<i>Bordenkircher v. Hayes</i> , 434 U.S. 357 (1978).....	i
<i>Brady v. Maryland</i> , 373 U.S. 83 (1963).....	1, 9, 37
<i>Caperton v. A.T. Massey Coal Co.</i> , 556 U.S. 868 (2009).....	21
<i>Caplin & Drysdale, Chartered v. United States</i> , 491 U.S. 617 (1989).....	30
<i>Chadbourn & Parke LLP v. Troice</i> , 571 U.S. 377 (2014).....	12, 14
<i>Cheney v. United States District Court</i> , 542 U.S. 367 (2004).....	iii
<i>Jean Alexander Cosmetics, Inc. v. L’Oreal USA</i> , <i>Inc.</i> , 458 F.3d 244 (3d Cir. 2006).....	14
<i>La Buy v. Howes Leather Co.</i> , 352 U.S. 249 (1957).....	7
<i>Liljeberg v. Health Services Acquisition Corp.</i> , 486 U.S. 847 (1988)	1, 15, 20, 21, 37
<i>Luis v. United States</i> , 578 U.S. 5 (2016).....	30, 31
<i>Madden v. Myers</i> , 102 F.3d 74 (3d Cir. 1996).....	32
<i>Merrill Lynch v. Dabit</i> , 547 U.S. 71 (2006).....	12
<i>SEC v. Zandford</i> , 535 U.S. 813 (2002).....	12

<i>Sprint Communications Co. v. APCC Services, Inc.</i> , 554 U.S. 269 (2008)	i, ii, 1, 8, 9, 23, 26, 37
<i>United States v. Antar</i> , 53 F.3d 568 (3d Cir. 1995).....	19
<i>United States v. Gonzalez-Lopez</i> , 548 U.S. 140 (2006).....	30
<i>United States v. Olano</i> , 507 U.S. 725 (1993).....	i
<i>Williams v. Pennsylvania</i> , 579 U.S. 1 (2016).....	21
Constitutional Provisions	
U.S. Const. amend. V.....	21
U.S. Const. amend. VI.....	30
Statutes	
18 U.S.C. § 401(3).....	26
18 U.S.C. § 1341.....	26
18 U.S.C. § 1343.....	14
26 U.S.C. § 7201.....	24
28 U.S.C. § 144	
	ii, 1, 19, 25, 37
28 U.S.C. § 455	
	ii, 1, 2, 5, 6, 15, 17, 19, 25, 27, 37
28 U.S.C. § 1651(a).....	4, 38
28 U.S.C. § 2106.....	2, 38
28 U.S.C. § 2241.....	3
Regulations	
28 C.F.R. § 540.18.....	28

Rules

Fed. R. Crim. P. 5(f).....	i, 1, 9, 37
Fed. R. Civ. P. 12(h)(3).....	5, 25, 35
Fed. R. Civ. P. 23.....	23
Fed. R. Civ. P. 59(e).....	11, 14, 36
Fed. R. Civ. P. 60(b)	
	5, 11, 14, 15, 25, 35, 36
Fed. R. Civ. P. 65(b).....	10, 12
Sup. Ct. R. 13.....	4
Sup. Ct. R. 20.....	v, 4, 6

SUMMARY OF ARGUMENT

Three independent grounds each require the writ, and any one of them is sufficient. They are stated here in plain terms; the record support for each follows below.

First, there was never a crime. The theory of prosecution, pleaded at paragraph 11 of the indictment, was that Petitioner filed settlement claims in the name of an entity to which the trading rights had been assigned, conduct this Court held lawful in *Sprint Communications Co. v. APCC Services, Inc.*, 554 U.S. 269 (2008), which holds an assignee may sue and recover in its own name. The government suppressed it, in violation of *Brady v. Maryland* and Rule 5(f), and no court has applied or addressed it in nearly five years.

Second, the judge who entered every order is statutorily disqualified. Judge Kenney held documented financial interests, on his own Form AO-10 disclosures, in the very securities and claims-settlement process at the center of the case, declared before any evidence that Petitioner's wife would be left with "zero or minus zero," and remained a named party to Petitioner's own lawsuit while refusing to recuse or to answer a sufficient affidavit under 28 U.S.C. § 144. Each ground independently requires disqualification under § 455 and vacates everything he entered under *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988). This Court may grant complete relief on this ground alone, without reaching the third.

Third, the only court asked to review any of this is itself disqualified. The Third Circuit, which alone was asked to review all four related appeals, employs the prosecutor's wife as an attorney in its own Executive Office. It has let the government's delay stand more than thirty-one months, never compelled a response, and never addressed one of these uncontested issues. No qualified forum remains to review a five-year miscarriage of justice, the very circumstance in which the writ exists.

**RELIEF SOUGHT AND WHY IT IS
UNOBTAINABLE ELSEWHERE (RULE 20.3(a))**

Petitioner does not ask this Court to permit the Third Circuit to decide No. 24-1381; that court cannot lawfully decide it. It is structurally disqualified under 28 U.S.C. § 455(a); the full court has already refused, by name, to disqualify itself or to send the matter here; it has demonstrated its bias across three related appeals through the pattern below; and for more than thirty-one months it has refused even to compel the Commission to respond, let alone to resolve the appeal. Asking the disqualified court to cure its own disqualification would only invite one more unreasoned denial.

Petitioner therefore seeks a writ directing that No. 24-1381, together with the antecedent disqualification question, be removed from the Third Circuit and reassigned to this Court, or to another conflict-free forum under 28 U.S.C. § 2106, so that Judge Kenney's disqualification and the voidness of the orders under review may be adjudicated by a court whose impartiality is not itself in question.

Relief is not obtainable in any other court. Petitioner has sought it in every forum available to him:

Forum	Relief Sought	Result
E.D. Pa.	§ 2241 petition	Rejected
M.D. Ala. No. 26-cv-007	§ 2241 habeas (First Step Act credits)	Pending; undecided after more than nine months
M.D. Ala. No. 26-cv-264	§ 2241 habeas challenging the underlying judgment	Dismissed as “improperly brought”; appeal (11th Cir. No. 26-11839) dismissed for want of prosecution after Petitioner’s mid-litigation transfer
M.D. Ala. No. 26-cv-209	Civil action and mandamus against former federal officials	Service denied; no merits adjudication
3d Cir. No. 25-1188	Mandamus, raising many of these same issues	Denied Jan. 26, 2026, after 361 days, unopposed, without addressing any ground
3d Cir. No. 25-1188	Motion to transfer to an unconflicted circuit	Denied Jan. 26, 2026, one word: “denied”

Forum	Relief Sought	Result
3d Cir. No. 24-1381	Motion to disqualify the entire Third Circuit and certify to this Court	Denied by the full court (twelve judges, by name), ECF No. 83 (24-1381) (Aug. 27, 2025), without a statement of reasons

The court that would ordinarily supply the remedy is the court whose disqualification is the subject of the petition. That is the definition of a case in which no other adequate means exist.

THE THRESHOLD MATTER: THIS PETITION IS TIMELY, AND THE ORDER RELIED ON TO SAY OTHERWISE PROVES IT

The Clerk has returned prior submissions as “out of time,” treating an August 26, 2025 order as the date a reconsideration motion was denied, so that any filing was due November 24, 2025. That premise is wrong, for two reasons.

First, this is an original proceeding under Rule 20, not a petition for certiorari. The jurisdictional predicate is the All Writs Act, 28 U.S.C. § 1651(a). Rule 13’s ninety-day clock governs review of a judgment, not an original writ, which issues precisely where there is no judgment to review. A rule that an original writ expires once a certiorari clock has run would mean the longer a court of appeals withholds a reviewable judgment, the more

completely it escapes this Court's supervision, which is backwards.

Second, the August 26, 2025 order decided nothing. It is a Clerk's order (ECF No. 82, 24-1381) that merely lifted a stay and set a response date; it entered no judgment and resolved no merits. What actually awaits decision in No. 24-1381 are two orders timely appealed almost three years ago: the district court's January 22, 2024 *Order* denying disqualification under 28 U.S.C. §§ 455 and 144 (ECF No. 348, 21-cv-04845), and its April 1, 2024 *Memorandum* denying dismissal for lack of subject-matter jurisdiction under Rule 12(h)(3) and relief under Rule 60(b) (ECF No. 372, 21-cv-04845). In the more than thirty-one months since, the Third Circuit has never ruled on either, never addressed a single ground, and never once compelled the Commission to respond, while the Commission has refused for years to contest any fact. The one document said to make Petitioner late is thus the same document proving the court below never ruled, and a clerk's scheduling order cannot start a limitations period for a merits decision never made.

That inaction is itself tantamount to a refusal to exercise jurisdiction, and what it protects is the court's own statutory disqualification, set out below. Because the Third Circuit cannot lawfully decide these matters, Petitioner seeks their removal, not an order that the disqualified court decide them. The full record of Petitioner's related applications to this Court is maintained publicly at <https://ExposingJustice.com>, so that the documented

pattern remains available for review even if any single filing is turned away below.

**WHY THE WRIT IS IN AID OF THIS COURT'S
APPELLATE JURISDICTION, AND WHY THE
CIRCUMSTANCES ARE EXCEPTIONAL (RULE
20.1)**

This is a case of first impression. Petitioner is aware of no case presenting this convergence: a prosecution in which there was never a crime, because this Court's own controlling authority establishes the charged conduct was lawful; a district judge who held a documented financial interest in the outcome and was statutorily disqualified on several independent grounds of 28 U.S.C. § 455; and an entire court of appeals, the only forum that could correct any of it, itself statutorily disqualified because the prosecuting attorney's wife serves as an attorney in its Executive Office. Each defect alone would warrant review. Their combination requires this Court's immediate action.

The writ is discretionary and "sparingly exercised." Sup. Ct. R. 20.1. Petitioner does not ask this Court to correct ordinary error. He asks it to restore the conditions under which error can be corrected at all: in four related proceedings every mechanism this Court relies upon to protect its appellate jurisdiction has failed, each failure documented and none contested.

The writ is in aid of this Court's appellate jurisdiction in the most literal sense. This Court's power to review the judgments below depends on the

Third Circuit entering a judgment to review. It has declined for more than thirty-one months in No. 24-1381, and has not even compelled the Commission to respond, though the Commission has missed every deadline it requested and its last request is now more than a year stale. Until that court acts, this Court's jurisdiction cannot attach, and the Clerk has already turned Petitioner away on that ground. The inaction below is not delay to be endured; it is the operative obstacle to this Court's own review.

This Court has granted the writ for much less. In *La Buy v. Howes Leather Co.*, 352 U.S. 249 (1957), it sustained mandamus against a district judge whose referral of cases to a master was "little less than an abdication of the judicial function." *Id.* at 256. A court of appeals that for more than thirty-one months will not decide a briefed and unopposed appeal, will not compel the Government to respond, and will not correct the void orders of a disqualified judge, has abdicated the judicial function in the most complete sense *La Buy* contemplated. And unlike *La Buy*, which turned on a discretionary docket-management choice, the failures here are constitutional, documented, and uncontested. If mandamus was warranted there, it is overwhelmingly warranted here.

What makes the circumstances exceptional is not the delay, but what it protects.

A. There Was Never a Crime, and This Court Said So in 2008.

The theory of prosecution appeared at paragraph 11 of the indictment and was carried forward verbatim

into the superseding indictment: that a claimant to a securities class-action settlement must have personally traded the security and must have personally lost money on the trade. That premise is not a contested characterization of the evidence. It is a proposition of law; it is wrong; and this Court held it wrong, unanimously, in *Sprint Communications Co. v. APCC Services, Inc.*, 554 U.S. 269 (2008).

Sprint holds that “an assignee of a legal claim for money owed has standing to pursue that claim in federal court, even when the assignee has promised to remit the proceeds of the litigation to the assignor.” 554 U.S. at 271. The assignment itself “transfers the assignor’s claim to the assignee,” so that the assignee sues as the real party in his own right. *Id.* at 286. And the assignee asserts that claim “in [his] own name”, as a first party, not as a third party. *Id.* at 290. That is what Petitioner did: he assigned his own real trades to the entities that filed the settlement claims in their own names as beneficial owners, exactly as counsel advised was lawful under *Sprint* and the long-settled Pennsylvania law of assignments. The trial evidence confirmed the trades were real and the assignments genuine; government witnesses, including a claims administrator and a cooperating co-defendant, testified that transferring trade rights to another entity to file claims is “common” and “not atypical” in the industry.

The Government knew. During the examination of its own cooperating witness at trial, when the witness explained that he had filed claims in the name of a company that did not place the underlying

trades, because Petitioner had told him the company had bought all of those trades, the prosecutor, Paul Shapiro, said aloud from counsel table that “this appears to be assigned.” Trial Tr., Day 4, at 20:11-13. That was the assignment identified in real time, on the record; Shapiro then immediately moved to strike his own words. The Government has since conceded that “even if each and every one of the underlying stock trades were real, there was no divergence between the indictment and the evidence.” ECF No. 267 (21-cr-427).

The exculpatory authority of this Court was knowingly suppressed by the Government. *Brady v. Maryland*, 373 U.S. 83 (1963). The district court never entered the order Federal Rule of Criminal Procedure 5(f) and the Due Process Protections Act of 2020 require. And in the five years since, no court has ever applied *Sprint* on the merits, not once, in any of the four proceedings, at either level. The suppression is preserved and pending in the certiorari petitions in Nos. 23-2110 and 24-1983. That a controlling, unanimous decision of this Court has been placed before the courts below repeatedly and never once applied is itself a matter for this Court’s review.

B. The Civil Enforcement Action Was a Weaponized Instrument of Bad Faith, and the Record Shows It.

The Commission filed suit on November 3, 2021, the same day the indictment was unsealed and Petitioner was arrested and taken into custody in Miami. Its function was to reach assets criminal

forfeiture could not: the criminal freeze reached roughly \$16 million, the civil freeze more than \$78 million.

The freeze was obtained on a nine-hundred-page ex parte application granted in under twenty-four hours, on a restraining order with no valuation, and with no finding of irreparable harm as Rule 65(b)(1) (A) requires. ECF No. 4 (21-cv-04845).

The show-cause hearing was held in Philadelphia at 9:02 a.m. on November 9, 2021. ECF No. 46 (21-cv-04845). At that same hour, Petitioner was in the custody of the United States Marshals and physically present at his own contested detention hearing in the Southern District of Florida, which proceeded before Magistrate Judge Goodman beginning at approximately 9:15 a.m. and continuing with government testimony until approximately 10:15 a.m. *United States v. Cammarata*, No. 21-mj-04176-EGT (S.D. Fla.), Doc. 17. The two hearings proceeded simultaneously, Petitioner in Miami and the civil hearing in Philadelphia, a thousand miles away. The same judge, Chad F. Kenney, presided over both the civil action and the parallel criminal prosecution in which Petitioner was then in federal custody, so the court that held the hearing in his absence and without notice knew precisely where he was.

The court's own order was violated. The temporary restraining order (ECF No. 4, 21-cv-04845, at 8) directed, **in the bold typeface the court itself used**, that the **"Parties shall meet and confer at least 24 hours before the hearing to discuss a recommended scheduling order."**

No conferral occurred, and none could have: Petitioner had not been served, had no notice, and was in Marshals' custody in Miami. Even on the Commission's own impossible account that Petitioner was served on November 8, 2021 at 10:50 a.m., there was no meet-and-confer twenty-four hours before the November 9 hearing. The Commission obtained sweeping ex parte relief in direct violation of a condition the court had set off in bold on the face of its own extraordinary order. These showings are developed in Petitioner's Rule 60(b)(4) motion (ECF No. 421, 21-cv-04845) and in his Rule 59(e) motion and reply, appended hereto; the Commission, given repeated opportunities, has never denied any of them.

The return of service (USM-285) records personal service in the Marshals' cellblock on November 8, 2021 at 10:50 a.m. Petitioner was never in that cellblock on November 8, as the Marshals' own logs and the docketed hearing records confirm. He was produced there on November 9, 2021 and handed the papers at about 10:50 a.m. that day, after both hearings had concluded. The form bears a handwritten "9" altered to an "8." The Commission's own certificate of service, executed November 8, states that service would go out by mail "November 9, 2021", conceding, in its own filing, that Petitioner had not been served when the hearing was held. ECF No. 10-1 (21-cv-04845).

Petitioner did not appear and did not consent. The order extending the restraining order nonetheless recites that "those parties who appeared for the hearing consented." ECF No. 17 (21-cv-04845)

(Nov. 10, 2021). This is the purest and most unrefuted due-process violation in the record, and it alone requires relief: a man's entire estate was frozen at a hearing he was given no notice of, could not attend because he was in federal custody a thousand miles away in a simultaneous hearing of his own, and to which his purported "consent" was manufactured on the face of the order. The extension ran to December 14, 2021, beyond Rule 65(b)(2)'s fourteen-day maximum, without a further hearing and without the required findings. By operation of law the restraining order expired no later than November 24, 2021.

In sum: the freeze issued with no finding of irreparable harm, at a hearing held without notice while Petitioner was simultaneously in his bail hearing in Miami, with no due process, extended beyond fourteen days, and expired by operation of law on November 24, 2021. It has nonetheless been in force for nearly five years.

Petitioner's dispositive motions, the motion for judgment on the pleadings (ECF No. 142, 21-cv-04845) and the motion for summary judgment (ECF No. 183, 21-cv-04845, filed December 12, 2022), each establishing that the complaint cannot plead the "in connection with a securities transaction" element required by *SEC v. Zandford*, 535 U.S. 813 (2002), *Merrill Lynch v. Dabit*, 547 U.S. 71 (2006), and *Chadbourne & Parke LLP v. Troice*, 571 U.S. 377 (2014), have never been adjudicated and have never been reduced to an appealable order. ECF No. 183 (21-cv-04845) has been pending for three years and ten months.

Judgment was entered instead on collateral estoppel. The sequence is critical. At Petitioner's criminal sentencing on June 6, 2023, the same judge declined to apply a securities-fraud enhancement, ruling: "this Court will not apply this enhancement," because "[i]t's a close case that is better litigated in the S.E.C. case," and "can be better litigated in the S.E.C. case when that resumes." Sentencing Tr., ECF No. 310 (21-cr-427). The very **next day**, June 7, 2023, the Commission filed its own motion for summary judgment, ECF No. 260 (21-cv-04845), a filing exceeding nine hundred pages, resting primarily on collateral estoppel from the criminal wire-fraud conviction, to establish the identical securities-fraud question the judge had just said belonged in the civil case.

Petitioner never received ECF No. 260 (21-cv-04845). He said so at the time and the docket documents it at every step. He moved the court to require service (ECF No. 269, 21-cv-04845); the court directed the Clerk to mail him the motion (ECF No. 274, 21-cv-04845), an entry marked "NOT MAILED TO CAMMARATA AND UNREPS"; the mail was returned undelivered; and, forced to oppose a motion he had never seen, Petitioner filed an opposition (ECF No. 285, 21-cv-04845) stating he had not been served and could only guess at its contents. To this day he has never seen ECF No. 260 (21-cv-04845). The court nonetheless granted it, without notice, without due process, without subject-matter jurisdiction, on an erroneous collateral estoppel, and while Petitioner's own dispositive motion at ECF No. 183 (21-cv-04845), which proved there was no

conduct “in connection with a securities transaction,” sat and still sits unadjudicated.

Wire fraud under 18 U.S.C. § 1343 contains no “in connection with a securities transaction” element. Preclusion cannot supply the one element that does not overlap. *Jean Alexander Cosmetics, Inc. v. L’Oreal USA, Inc.*, 458 F.3d 244, 249 (3d Cir. 2006). The district court’s own opinion conceded the instability of the ground, opening “Collateral estoppel looms large in this case,” ECF No. 319 (21-cv-04845) at 2, and adding that “even if collateral estoppel did not apply” the result would be the same, *id.* at 21, the kind of fallback a court supplies only when it doubts its primary basis. When Petitioner challenged the estoppel, the court defended it, holding it applied “regardless of whether the exact same elements are charged in both the criminal and civil” cases. ECF No. 372 (21-cv-04845) at 5-6. And the sole securities nexus the court identified, that settlement administrators, in at least 130 instances, liquidated money-market securities to pay claims, ECF No. 319 (21-cv-04845) at 23, is not an investment decision induced by any misrepresentation of Petitioner’s in filing a years-old settlement claim. That fatally flawed theory cannot satisfy *Troice*, 571 U.S. at 387. These grounds are developed in Petitioner’s pending motion for relief from a void judgment under Rules 60(b)(4) and 12(h) (3), filed August 7, 2026 (ECF No. 421, 21-cv-04845), and in the Rule 59(e) motion and reply, which are appended hereto.

For the first time in nearly five years, on August 12, 2026, the district court ordered the Commission to

respond to the Rule 60(b)(4) motion by August 26, 2026. ECF No. 422 (21-cv-04845). When the Commission finally responded, it omitted every dispositive showing and left the central facts uncontested. The refusal of every level of the Philadelphia judiciary to require, or to supply, an answer to these facts is itself the coverup this petition asks this Court to reach.

C. The Judge Who Entered Every Order Is Disqualified on Multiple Independent Grounds, and If He Is Disqualified, Everything Falls.

This is the ground on which this Court can resolve the case most narrowly. Judge Kenney presided over the SEC enforcement action, the criminal fraud prosecution, and the contempt indictment. If he was disqualified, then under *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988), every order he entered is voidable without any inquiry into actual bias: the asset freeze, the summary judgment, the restitution and forfeiture, the fraud conviction itself. The disqualification question is not a side issue; it is the master key to the case. Judge Kenney is disqualified on each of the following independent grounds.

1. Section 455(b)(4), a financial interest not merely in the subject matter, but in the outcome. Section 455(b)(4) requires disqualification where the judge has “a financial interest in the subject matter in controversy ... or any other interest that could be substantially affected by the outcome of the proceeding,” and it applies “however small” the interest. 28 U.S.C. § 455(b)(4), (d)(4). Judge Kenney’s

interest here was not abstract. He held, during the relevant period, the same individual securities Petitioner held; he was himself an eligible claimant and co-class-member who had filed claims in the same securities-class-action settlement mechanism at the heart of this case; and his own recovery from those settlement pools was larger because Petitioner's conviction removed Petitioner as a competing claimant. He said as much from the bench at sentencing:

“I, I, I have invested, I've made a claim and they say, this is how much you're getting back based on all the claims that were made. Forty million dollars is removed and you're not getting it. Now, when forty million dollars comes back, you're going to get the portion that you lost.”

Sentencing Tr., ECF No. 310 (21-cr-427) at 69:12-18. A judge with no stake in the securities-claims recovery process has no occasion to speak in the first person about his own investing and claim-making while sentencing another man for filing claims. His own Form AO-10 disclosures confirm his individual stock holdings and his purchases of Apple, Boeing, and Exxon Mobil securities on December 24, 2018 and February 14, 2019, each within the class period of a then-pending securities class action against that issuer; the Apple action settled on September 18, 2024, while Petitioner's appeal was pending and the judge remained class-eligible. The Commonwealth of Pennsylvania has refused to produce his Statements of Financial Interests from his service as a Court of Common Pleas judge (2002-2018), which would in

reasonable likelihood show he held many of the same securities Petitioner held, over the same period. This is not a financial interest in the subject matter alone. It is a direct financial interest in the outcome: Petitioner's conviction enlarged the judge's own recovery.

The court's only response, in its April 13, 2026 Memorandum, was that no Apple, Boeing, or Exxon Mobil settlement fund existed when Petitioner was tried and that those class actions were not part of his prosecution. ECF No. 487 (21-cr-427) at 2-3. That answers the wrong question. Section 455(b)(4) turns on whether the outcome could affect the judge's interest, not on when a fund pays out. The Memorandum does not deny that the judge held the same securities in the same class periods, that he and Petitioner were co-class members, or that Petitioner's conviction removed him as a competing claimant.

2. Section 455(a) and § 455(b)(1), documented personal bias and prejudgment, declared before any evidence. Disqualification is required where "[the judge] has a personal bias or prejudice concerning a party," § 455(b)(1), and wherever "his impartiality might reasonably be questioned," § 455(a). The record documents prejudgment at the very outset, and again weeks later:

- At the November 9, 2021 show-cause hearing, held in Petitioner's absence, without notice, while he was in a simultaneous criminal detention hearing in Miami, the court remarked that it "consider[ed] this a crime against the courts," six days after arrest and

before any evidence, and told Petitioner's non-party spouse, Nina Cammarata, that she had "enjoyed the fruits of this criminal enterprise for many years." Neither statement appears in the certified transcript at ECF No. 46 (21-cv-04845); the passages were omitted or marked "inaudible," and the court has refused access to the raw audio, which it and the transcriber have said is unavailable. Petitioner preserved both statements by placing them on the record at his June 6, 2023 sentencing, ECF No. 310 (21-cr-427) at 76, and Judge Kenney did not deny them.

- At the January 11, 2022 preliminary-injunction hearing, the prejudgment is preserved verbatim on the transcript. The subject under discussion was what, if anything, would be left of Petitioner's assets for his non-party spouse, Nina Cammarata, to live on and support their son. The court's answer, delivered from the bench before any evidence, was that at the end of the process she "may be sitting on zero or minus zero." ECF No. 71 (21-cv-04845) at 29. That was not idle commentary. It was the court announcing, at the outset of the case, the only two outcomes it would permit: nothing, or less than nothing. The court had already frozen more than \$78 million, and ultimately more than \$100 million would be taken, on a loss the Government alleged at roughly \$16 million. Comparing Petitioner to others in his court, the judge added: "I have a lot of other people in this courtroom, believe me, who have been making money by illegal means. They're arrested. They have federal defenders, not ... people like

Mr. Pozos representing them, and their families are starving, believe me.” *Id.* at 28.

This is worse than *Antar* in two respects. In *Antar* the judge revealed only at sentencing that his objective had been to return money to victims; here, Judge Kenney declared the predetermined financial outcome, and Petitioner’s guilt, at the very beginning, before any evidence, and without the support of law, while holding a documented financial interest in that outcome. And in *Antar* the concurrent proceedings were held on back-to-back days; here the two hearings were conducted at the same hour on the same day, one in Philadelphia and one in Miami, with Petitioner present only in Miami.

3. Section 455(b)(5)(i), the judge is a party to related litigation arising from the same facts. As of February 21, 2024, Judge Kenney is a named defendant in *Cammarata v. United States*, No. 24-cv-1000 (D.N.J.), a civil action arising from the same operative facts and government conduct at issue here. Section 455(b)(5)(i) requires disqualification where the judge is a party to the proceeding; the rule reaches a judge whose own conduct, in substantially related litigation, is under scrutiny. He has never addressed this ground.

4. Section 144, a self-executing statute the challenged judge violated. Petitioner filed a timely and sufficient affidavit of bias. ECF No. 345 (21-cv-04845). Section 144 provides that once a legally sufficient affidavit is filed, “such judge shall proceed no further therein, but another judge shall be assigned.” The challenged judge is forbidden to

rule on it himself. Judge Kenney denied it himself, in a single paragraph, addressing no ground raised. ECF No. 348 (21-cv-04845). That denial is the order on appeal in No. 24-1381, the appeal the Commission refuses to contest and the Third Circuit has not decided in more than thirty-one months.

Each ground is independently sufficient. Because the same disqualified judge entered every order across the civil and criminal proceedings, a ruling that he was disqualified vacates all of it under *Liljeberg*: the fraud conviction, the SEC judgment, the asset freeze, the restitution, and the forfeiture. This Court need not reach the Third Circuit's own conflict (Part D) to grant complete relief on this ground alone.

The victim theory confirms the point. The Government never identified any individual victim, not at trial, not in the Presentence Report, not in its sentencing memorandum (due seven days before sentencing under ECF No. 196 (21-cr-427)), not at sentencing, and not on appeal. The court itself supplied the theory, declaring the settlement-fund claims administrators "the victims," Sentencing Tr. at 69:18-24, and applying a victims enhancement on that basis, a definition that, by its own terms, encompassed the judge, who had submitted claims to those same funds. On direct appeal the Third Circuit agreed the district court got it wrong: it held the court "incorrectly characterized both the settlement funds themselves and the claims administrators as 'victims'" under the Mandatory Victims Restitution Act, and it vacated the restitution order on that basis. *United States v. Cammarata*, No. 23-2110 (3d Cir. Feb. 24, 2025). The victim theory on which the

loss and restitution calculations rested was, by the court of appeals' own holding, wrong.

D. The Only Court Asked to Review All of This Employs the Prosecutor's Wife as an Attorney of Its Executive Office.

John V. Donnelly III is the lead Securities and Exchange Commission attorney in the enforcement proceeding. His spouse, Jeanne Donnelly, is an attorney who serves as Assistant Circuit Executive of the Third Circuit, a role, within the deciding institution, as an attorney, that supports and serves the very judges before whom her husband's litigation practices, charged misconduct, and the parallel proceedings and orders he obtained are all under review. That court has never denied on the merits, never addressed, and never compelled any response to any of these uncontested issues in more than thirty-one months.

This is not a matter of subjective bias, and Petitioner alleges none. *Liljeberg*, 486 U.S. 847, holds that structural conflicts require vacatur without inquiry into a judge's state of mind; *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813 (1986), and *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), locate the same standard in the Due Process Clause. *Williams v. Pennsylvania*, 579 U.S. 1 (2016), answers the two objections that could be raised. First, no showing of prejudice is required: an unconstitutional failure to recuse is structural error, "not amenable to harmless-error review." *Id.* at 15-16. Second, the taint is not cured by the participant's role being non-decisive: *Williams* vacated though the disqualified

justice's vote changed no outcome, holding the failure structural "even if the judge in question did not cast a deciding vote." *Id.* at 16. That an Assistant Circuit Executive does not herself decide appeals is therefore no answer; what matters is that a person with a disqualifying interest occupies a position within the deciding institution, serving the deciding judges, in the very matter in which the interest lies.

Petitioner's March 2024 judicial-misconduct complaint against Judge Kenney and Attorney Donnelly was routed to the Office of the Circuit Executive, the office that employs Donnelly's spouse, which took no action and addressed none of it. It is the same office that administered the three other appeals, Nos. 23-2110, 24-1983, and 25-1188, each of which produced a troubling outcome and each of which is now the subject of a related petition for certiorari pending in this Court. And when Petitioner moved to disqualify the entire Circuit and certify the case here, the full court, all twelve participating judges, by name, denied the motion without a word of explanation. ECF No. 83 (24-1381) (Aug. 27, 2025).

E. The Pattern Across All Four Related Appeals.

No. 23-2110 (direct appeal, fraud conviction; opinion filed Feb. 24, 2025, ECF No. 59, 23-2110). The panel's own opening words at oral argument captured what this case is. Judge Smith, the authoring judge and a self-described "class action groupie," told counsel: "this is at least in my experience a really unusual case ... because I've never seen a criminal case converge in some respect

with the provisions of rule 23 in the rules of civil procedure.” Oral Arg. Tr., No. 23-2110 (Sept. 19, 2024). A jurist steeped in class-action law recognized, from the bench, that prosecuting as a crime what is in substance a Rule 23 class-action question was extraordinary. The panel then vacated the restitution order, holding the district court wrongly treated the funds and administrators as “victims.” But it affirmed the convictions, and it did so while addressing “assignment” only as a disputed question of trial fact (whether the entities really owned the trades and whether Petitioner disclosed the assignments), and without ever citing, applying, or even acknowledging this Court’s controlling decision in *Sprint* or the Pennsylvania law of assignments that makes the conduct lawful. Petitioner’s addendum (ECF No. 69, 23-2110) demonstrated, sentence by sentence, that the single dispositive paragraph on page 19 of the opinion, the paragraph rejecting the assignment defense, was factually and legally wrong in each of its assertions, and that it “omits controlling ... Supreme Court and Pennsylvania law on legal assignments, misstates key trial evidence, and misrepresents the conduct of the Appellant.” The court refused to accept the correction on the ground that Petitioner was represented by counsel he had previously terminated. Paragraph 11 of the indictment was the entire theory of prosecution; *Sprint* alone proves it false, the trial evidence affirms that the conduct was lawful, and still no government attorney and no court will apply or even address it.

No. 24-1983 (direct appeal, tax conviction). Affirmed April 7, 2026; panel rehearing and rehearing en banc denied May 7, 2026, without reasons. The suppression here was not partial. The Government withheld every category of exculpatory evidence that defeated an element of 26 U.S.C. § 7201, and went further: it deleted the records, denied in writing they existed, and withheld them even from its own Internal Revenue Service revenue agent, the witness who computed the tax on which the conviction rests. That agent testified he was given “no evidence provided to me that there were expenses at all,” Tr. Vol. 8 at 1386-87, and that “I was not asked to analyze records to find those, and so I did not,” *id.* at 1389. A prosecution that truly produced those records to the defense would have had no reason to keep them from the very agent whose job was to calculate the tax. The full showing, the suppressed business-expense records exceeding the income charged, the Forms 1042-S showing the income was reported and tax withheld and paid, and the settlement-administrator letters stating the payments were generally not taxable, is developed in the certiorari petition in No. 24-1983.

No. 25-1188 (mandamus to the Third Circuit). Filed raising many of these same issues, and left on the docket 361 days without any response from the Government and without any ruling. On January 26, 2026 the court denied the venue motion in one word and denied the petition by per curiam order (Krause, Phipps, Scirica, JJ.) without adjudicating any argument raised. A petition for certiorari in No. 25-1188 is also pending in this Court.

No. 24-1381 (the appeal at bar). Docketed March 2024. More than thirty-one months. The Commission obtained multiple extensions, a stay and its lifting, and a further sixty-day extension on September 3, 2025, over a year ago, before abandoning the appeal. It has never filed a merits response brief and has missed every deadline following its own requested extensions. The Third Circuit has never ordered it to respond and refuses to address or contest any fact on the record or the misconduct it establishes. There has been no substantive docket activity since September 12, 2025. Neither appeal, from the Section 455 and Section 144 denial (ECF No. 348, 21-cv-04845) or from the Rule 12(h)(3) and Rule 60(b) denial (ECF No. 372, 21-cv-04845), has ever been decided.

The notices of appeal from the orders in No. 21-cv-04845, including the amended notice of appeal filed May 29, 2024, were docketed together under No. 24-1381, and have not moved.

The pattern. One-word denials. No response briefs. No merits engagement. An en banc refusal, by name, to examine the court's own conflict. Across all four appeals the Government has never contested the operative facts, not the false return of service, the simultaneous hearings, the expired restraining order, the AO-10 disclosures, the sentencing admission, the spousal employment, or the suppressed business-expense and 1042-S records. They are no longer allegations; they

are an uncontested record, because no court has ever required an answer.

The record is not merely strong; it is admitted. Across the civil and criminal proceedings, and across all four appeals, the government has never once contested the dispositive facts set out in this petition. It has not disputed that *Sprint* controls and defeats paragraph 11 of the indictment. It has not disputed the judge's financial interests, his pre-evidence declarations, or his status as a named party. It has not disputed the non-service, the expiration of the asset freeze by operation of law, or the entry of summary judgment on a motion Petitioner never received. Petitioner does not ask this Court to treat that silence as a default; he asks it to recognize what the silence means. These are not contested allegations awaiting proof. They are uncontested facts on the face of the record, which the responsible courts have declined to address for more than thirty-one months.

F. The Failures Have Compounded, and Are Compounding Now.

On May 28, 2026 a new indictment issued. *United States v. Cammarata*, No. 2:26-cr-00238-CFK (E.D. Pa.), assigned again to Judge Kenney. It charges criminal contempt under 18 U.S.C. § 401(3) predicated on the very restraining order that was entered without any required showing of irreparable harm, is void, and expired by operation of law on or before November 24, 2021, and mail fraud under 18 U.S.C. § 1341 arising from the same asset freeze. The same Assistant United States Attorneys whose

conduct is at issue in the Third Circuit lead the prosecution.

So the posture is this: a man is again being prosecuted, by the same Assistant United States Attorneys, for contempt of an order entered without due process or any showing of irreparable harm and expired five years ago, before a judge whose disqualification is the subject of an appeal the same court has refused to decide for more than thirty-one months, in a circuit that employs the prosecuting attorney's wife. Judge Kenney will preside over a trial on the validity of his own decrees, in which every finding in his favor validates the conduct at issue here. He is not merely disqualified under 28 U.S.C. Section 455; he is, once again, a party in interest in the enforcement of his own orders.

Petitioner was transferred from Federal Prison Camp Montgomery, his lowest-custody designation, to face this new prosecution, losing access to his legal materials at a critical stage.

The retaliation has extended to Petitioner's access to this Court itself, and its timing is telling. In the weeks beforehand, a presidential pardon appeared imminent: Petitioner's case manager told him that the White House had contacted the institution requesting his records. It was immediately after that, and only then, that the harassment began, repeated searches of Petitioner's living area that turned up nothing, day after day, until the institution manufactured the accusation that would remove him.

On April 15, 2026, one day after the Magistrate Judge in *Cammarata v. Washington*, No. 2:26-cv-00007 (M.D. Ala.), ordered the Bureau of Prisons to answer Petitioner's First Step Act habeas petition, Petitioner was called to mail call at Federal Prison Camp Montgomery to receive three sealed packages, each bearing the return address of the Office of the Clerk of the Supreme Court of the United States. The three items, later confirmed through the Court's own No-Reply@supremecourt.gov notification system, were the Clerk's letters of March 17 and April 8, 2026 regarding Petitioner's emergency application to the Circuit Justice in No. 24-1381, and the Clerk's letter of April 9, 2026 setting out the defects to be cured in No. 23-2110. In other words, the intercepted mail was this Court's own case correspondence.

The officer did not open the packages in Petitioner's presence, as 28 C.F.R. § 540.18 requires for special mail and as the same officer had done every prior time. Petitioner was detained, the packages removed from his sight for roughly twenty minutes, and a Bureau captain returned asserting the documents inside, mailed by the Clerk of the Supreme Court of the United States, were "drenched in methamphetamines." No package was opened in his presence, no substance shown to him, no incident report issued, and no disciplinary hearing held. Within one hour, still in the clothing he wore to mail call, Petitioner was moved to a county jail and separated from his legal files during active deadlines in this Court and the Third Circuit. The accusation charged the Supreme Court of the United States with smuggling narcotics into a federal prison.

Petitioner's pardon was denied not long after, on July 10, 2026.

The accusation was never adjudicated. There has been no disciplinary hearing, no finding, and no charge Petitioner could contest, yet he has been punished on it for months: his reputation damaged so that Bureau officers still question him about it, his legal files cut off when he needed them most, his time consumed answering a fabrication instead of litigating, and, he has every reason to believe, his pardon lost. He was punished, for months, on a fiction that implicated the Supreme Court of the United States, with no due process whatsoever.

These facts are documented, and every one of them stands uncontested, in *Cammarata v. Washington*, No. 2:26-cv-00007 (M.D. Ala.) (Emergency Motion, ECF No. 10; Incident Report No. 4303505), and the Clerk's confirmation of the three mailings is available as an exhibit. Petitioner does not ask this Court to resolve that matter here; he recounts it because it shows the lengths to which the institutions below have gone to keep these claims from a neutral forum: they accused this Court's own Clerk of mailing narcotics to move the man trying to be heard.

This Court is the only court that can act. Every safeguard designed to prevent this has been asked to operate and has not: the recusal statutes, the misconduct-complaint process, the appellate courts, and the mandamus remedy in the circuit. What remains is a nearly five-year deprivation of liberty and of more than \$100 million in property, resting on

a theory this Court decided unanimously in 2008, imposed by a judge with a documented financial interest in the outcome, and shielded by a court of appeals with a structural conflict of its own, none of it contested or adjudicated. That is not error; it is the failure of the mechanism by which error is corrected, and it is why the writ should issue.

G. The Asset Freeze Was Used to Strip Petitioner of Counsel of His Choice, a Structural Error.

The same unlawful asset freeze, which this petition shows was granted without any finding of irreparable harm, extended without due process, and expired by operation of law, was turned to a further purpose: it was used to deprive Petitioner of the lawyers he had chosen and could lawfully afford. The Sixth Amendment right to retain counsel of one's choice is not a trial-management convenience. Its wrongful denial is *structural error* that requires reversal without any showing of prejudice. *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006). A court may not freeze assets that are untainted by the alleged offense in order to prevent a defendant from paying the counsel he has retained. *Luis v. United States*, 578 U.S. 5 (2016); see *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617 (1989).

Petitioner avers the following, of his own knowledge, as sworn facts. The Commission admitted on the record that more than \$5 million in untainted, liquid funds existed in Petitioner's Merrill Lynch accounts, enough to fund his defense many times over. Petitioner made two separate requests to release

untainted funds for counsel, and the court denied both. First, in February 2023 he sought roughly \$250,000 to retain Peter Goldberger for his criminal fraud appeal. Rather than release any of the admitted Merrill Lynch funds, the court conditioned relief on the complete liquidation and repatriation of a \$2.6 million Palantir position held in a Bahamian brokerage account at Magellan Securities, owned by a Barbados irrevocable life-insurance trust (Cotswold Insurance of Barbados) created in 2004, that Petitioner neither owned nor controlled, that was never subject to the freeze, and that lay entirely outside the court's jurisdiction. Petitioner refused to agree and warned the court in writing that compelling a foreign trust's assets into the court was itself an act in the absence of all jurisdiction, the basis for No. 24-cv-1000 (D.N.J.). The court ordered it anyway. Second, by the April 6, 2023 Ballard Spahr letter and again in May 2023, Petitioner sought \$500,000 for sentencing counsel, to make the arguments the court had ordered him to present pro se after prior counsel refused to proceed without additional funding, and to defend the SEC action. That request too was refused. The right to spend one's own untainted assets on counsel of choice is exactly the right *Luis* protects, and it was denied.

The suppression extended to the record itself. On April 6, 2023, David Axelrod of Ballard Spahr LLP submitted to Judge Kenney a formal petition concluding that "there is no basis for the SEC's asset freeze or its entire lawsuit against Mr. Cammarata," and that the Commission "cannot and will not be able to prevail on its claim because it cannot prove

this necessary ‘in connection’ element.” The letter further warned that, though Petitioner had been convicted, that “does not mean he no longer has Constitutional rights,” and that the baseless asset freeze forced on him the unfair choice of relying on attorneys he did not trust or fighting the full power of the government by himself, so that Petitioner could not “exercise his Constitutional right and not be trampled by the power of the federal government.” It asked the court to release untainted funds to prevent “any further due process violations.” That submission was tendered for docketing more than once. The court refused to docket it. It has never appeared on the docket, and the court has never acknowledged it. The refusal to docket a reputable firm’s formal jurisdictional challenge, like the three-year refusal to rule on Petitioner’s own dispositive motion at ECF No. 183 (21-cv-04845), is not administrative housekeeping. It is the obstruction of the record this petition describes.

THE DOCKET ITSELF PROVES THE POINT

Petitioner does not ask this Court to accept a characterization. The docket in No. 21-cv-04845 establishes each of the following without dispute. The record that follows shows a delay that is the Commission’s doing and the court’s to cure, and “[u]ndue delay is tantamount to a failure to exercise jurisdiction.” *Madden v. Myers*, 102 F.3d 74, 79 (3d Cir. 1996).

A. The Motions That Would End the Case Have Never Been Adjudicated. The Motions That Move Petitioner’s Money Are Decided in Days.

Matters of record on a single docket, No. 21-cv-04845:

Petitioner’s dispositive motions, never adjudicated:

ECF	Filed	Motion	Status
142	Aug. 31, 2022	Judgment on the pleadings, failure to plead “in connection with a securities transaction”	One-line order denying it without reasons (ECF No. 162, 21-cv-04845)
183	Dec. 12, 2022	Summary judgment, failure to plead “in connection with a securities transaction”	Never adjudicated; no appealable order has ever issued. 3 years, 10 months.
363	Mar. 7, 2024	Dissolve the asset freeze, the TRO expired by operation of law	Never adjudicated; no appealable order has ever issued. 31 months.

The Government’s motions, decided:

ECF	Filed	Motion	Decided / Elapsed
389	June 14, 2024	Preserve status quo as to frozen assets	Same day
414	May 1, 2025	Disbursement of funds	1 day
416	May 7, 2026	Authorize payment of funds	19 days
391	July 8, 2024	Modify asset freeze and distribute assets	36 days

The comparison requires no argument. On the same docket, before the same judge, motions releasing Petitioner's frozen property to the Government are resolved in a day, while the motions that would establish the property was never lawfully frozen have gone unresolved for years. One was decided the day it was filed.

A Footnote Is Not an Adjudication.

The response that ECF No. 183 (21-cv-04845) was disposed of by a footnote in ECF No. 372 (21-cv-04845), an order denying a different motion, fails. A footnote in an order resolving an unrelated motion is not an adjudication of a dispositive summary-judgment motion: it produced no docket entry disposing of ECF No. 183 (21-cv-04845), made no findings on the elements raised, and is not appealable. ECF No. 183 (21-cv-04845) has sat since

December 12, 2022 and independently dismisses the case, proving no conduct “in connection with a securities transaction” and no subject-matter jurisdiction. The court refused to adjudicate it, yet granted the Commission’s ECF No. 260 (21-cv-04845), which Petitioner never received, while ECF No. 183 (21-cv-04845) remained pending, without notice, on an erroneous collateral estoppel. For three years and ten months the motion has occupied a status unknown to the Federal Rules: not granted, not denied, not appealable, and not gone.

B. The Failure to Serve Petitioner Is on the Face of the Docket, at Both Levels.

Non-service runs through the record. The order directing the Clerk to mail the Commission’s nearly nine-hundred-page summary-judgment motion was marked “NOT MAILED TO CAMMARATA AND UNREPS” (ECF No. 274, 21-cv-04845), after which judgment was entered on that unserved motion. The April 2024 Memorandum and Order denying his Rule 12(h)(3) and 60(b) motion, one of the orders on review in No. 24-1381, was docketed “NOT MAILED TO PRO SE PARTIES,” and when sent came back “RETURN TO SENDER; UNABLE TO FORWARD.” ECF Nos. 372, 373, 384 (21-cv-04845). Even the full court’s order denying disqualification (ECF No. 83, 24-1381) was returned undeliverable and re-sent. ECF No. 90 (24-1381) (Sept. 2025). At every level, the orders that mattered most were the ones Petitioner was not served with.

C. For the First Time in This Case, the Commission Has Been Ordered to Answer, and Still Did Not Contest the Facts.

On August 12, 2026, the district court ordered the Commission to respond to Petitioner's Rule 60(b)(4) motion. ECF No. 422 (21-cv-04845). That is the only occasion in nearly five years any court directed the Commission to answer a submission of Petitioner's, and it issued weeks after his most recent attempt to reach this Court. Its response omitted every dispositive showing. Across the Rule 60(b)(4) and Rule 59(e) briefing the Commission has never denied the false return of service, the simultaneous hearings, the expired restraining order, or the non-receipt of ECF No. 260 (21-cv-04845). That refusal to contest, matched by the Solicitor General's waiver of any response in No. 26-5387 (the certiorari petition from No. 25-1188) and nearly three years of silence in the court of appeals, is the uncontested record on which this petition rests.

The non-receipt of ECF No. 260 (21-cv-04845) is not a stray irregularity. It is one more documented, uncontested denial of due process in a case built on them, the ex parte freeze, the show-cause hearing held in Petitioner's absence, the manufactured "consent," the judgment entered on a motion the docket shows was never delivered, and the dispositive motion denied by a footnote, each on the face of the record, none contested by the Government, and none addressed by any court. A single uncorrected violation of this kind would ordinarily warrant relief; here they are stacked across nearly five years, and the common thread is

not that they were decided against Petitioner but that no court would decide them at all, the injury the writ exists to cure.

CONCLUSION

Any one of three independent grounds requires that the judgments below be set aside, and this Court may grant relief on the narrowest of them without reaching the others:

First, there was never a crime. The conduct charged was held lawful by this Court's unanimous decision in *Sprint*, which was suppressed in violation of *Brady* and Rule 5(f); the resulting convictions and the due-process violations that produced them cannot stand.

Second, the district judge was statutorily disqualified under 28 U.S.C. § 455 on multiple independent grounds and under § 144, and because he entered every order across the related proceedings, his disqualification voids all of them under *Liljeberg*. This Court can grant complete relief on this ground alone, without reaching the conduct of the court of appeals.

Third, and only if necessary, the Third Circuit is itself structurally disqualified and has, through conduct that has never been contested, refused for more than thirty-one months to adjudicate any of it, while employing the prosecuting attorney's spouse as an attorney of the office that serves its judges. There is no starker instance of a complete breakdown of the safeguards of fairness and integrity at every level of

a federal prosecution, and no remaining forum capable of neutrally reviewing it.

For these reasons, the petition for a writ of mandamus should be granted. This Court should direct that Third Circuit No. 24-1381, together with the antecedent question of Judge Kenney's disqualification, be removed from the Third Circuit and reassigned to this Court, which may decide it itself, or to another conflict-free forum under 28 U.S.C. §§ 1651(a) and 2106, with such further relief as the interests of justice require.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Cammarata', with a stylized flourish at the end.

Joseph A. Cammarata
Petitioner, pro se
Register No. 02555-506
FCI Atlanta
Federal Correctional Institution
P.O. Box 150160
Atlanta, Georgia 30315
October 20, 2026

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

JOSEPH A. CAMMARATA, et al.,
Defendants.

CIVIL ACTION
NO. 21-cv-04845

ORDER

AND NOW, this 22nd day of January 2024, upon consideration of Defendant Joseph A. Cammarata's Motion for Recusal and/or Disqualification of Judge (ECF No. 345) and Plaintiff's Response (ECF No. 346), it is hereby ORDERED that the Motion (ECF No. 345) is DENIED.

BY THE COURT:

/s/ Chad F. Kenney

CHAD F. KENNEY, JUDGE

Filed 01/23/24 (ECF No. 348)

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

JOSEPH A. CAMMARATA, et al.,
Defendants.

CIVIL ACTION
NO. 21-cv-04845

MEMORANDUM

KENNEY, J. APRIL 1, 2024

I. INTRODUCTION

The Securities and Exchange Commission (“SEC”) brought suit against Defendant Joseph A. Cammarata on November 3, 2021, for violations of the Securities Exchange Act of 1934, following a criminal action against Cammarata brought by the United States for the same underlying conduct. On June 7, 2023, the SEC moved for summary judgment against Cammarata on two counts, and the Court granted that motion as to liability on August 31, 2023 (ECF Nos. 319, 320). Following briefing on remedies (ECF Nos. 336, 337, 341), the Court issued a Final Judgment holding Cammarata liable to the SEC for \$2,701,793.98 on January 23, 2024 (ECF No. 352).

On February 5, 2024, Cammarata filed a “Motion to Dismiss the SEC’s Complaint for Lack of Subject Matter Jurisdiction Pursuant to Fed. R. Civ. P. 12(h) (3) and in the Alternative a Motion for Relief from (ECF #320) Pursuant to Fed. R. Civ. P. 60(b).” ECF No. 353. The Motion is fully briefed and ripe for review. *See* ECF Nos. 358, 362. For the reasons discussed below, Cammarata’s Motion is denied.

II. STANDARD OF REVIEW

A federal district court has jurisdiction of “all civil actions arising under...laws...of the United States.” 28 U.S.C. § 1331. “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Fed. R. Civ. P. 12(h) (3).

Federal Rule of Civil Procedure 60(b) provides that “[o]n motion and just terms, the court may relieve a party of its legal representative from a final judgment, order, or proceeding for ‘[m]istake, inadvertence, surprise, or excusable neglect; . . . fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; the judgment is void; . . . or any other reason that justifies relief.’”

III. DISCUSSION

a. Subject Matter Jurisdiction

Cammarata first argues that the SEC lacked subject-matter jurisdiction to bring a securities fraud claim, since his conduct did not bear on securities fraud. ECF No. 353 at 5-8. Cammarata made the same arguments in his Motion to Dismiss (ECF No. 142),

Motion for Relief from Stay for the Limited Purpose of Hearing a Motion for Summary Judgment (ECF No. 183), and his Cross Motion for Partial Summary Judgment (ECF No. 285). As the Court explained in prior opinions, Cammarata's schemes were committed in connection with securities transactions, which provides an appropriate basis for the SEC to charge him with violating the Securities and Exchange Act of 1934. *See* ECF No. 162 at 1 n.1 (holding, on the motion to dismiss, that the SEC satisfied its burden when it alleged that "the targets of Defendants' alleged fraud divested themselves of their ownership interest in securities due to Defendants' misrepresentations."); *see also* ECF No. 319 at 24 (holding, on a motion for summary judgment, that "securities transactions were at the very heart of Cammarata's fraudulent activity. Accordingly, there can be no question that Cammarata's material representations were made in connection with the purchase or sale of securities and no reasonable jury could find otherwise."). In sum, the Court finds no merit to Cammarata's claim that the SEC lacked subject-matter jurisdiction to bring a securities fraud claim.

b. Collateral Estoppel

Cammarata next contends that the Court's ruling on collateral estoppel in its August 31, 2023, opinion granting summary judgment constituted a "mistake" that warrants relief from judgment. ECF No. 353 at 11-14. Specifically, the Court found that Cammarata's criminal conviction for wire fraud estopped him from arguing that he had not committed securities fraud. ECF No. 319 at 21-26.

Cammarata argues here that his criminal conviction did not contain an element bearing on securities law, and therefore collateral estoppel should not have applied. ECF No. 353 at 12-15.

Collateral estoppel applies when: “(1) the issue sought to be precluded [is] the same as that involved in the prior action; (2) that issue [was] actually litigated; (3) it [was] determined by a final and valid judgment; and (4) the determination [was] essential to the prior judgment.” *Anderson v. C.I.R.*, 698 F.3d 160, 164 (3d Cir. 2012). As the Court explained in its prior opinion, collateral estoppel applies to both factual and legal issues established in prior proceedings. *See id.* This is true regardless of whether the exact same elements are charged in both the criminal and civil proceedings. *See S.E.C. v. Lazare Industries, Inc.*, 294 F. App’x 711, 714 (3d Cir. 2008).

Cammarata’s wire fraud conviction established that he “knowingly devised a scheme to defraud and to obtain money or property by materially false or fraudulent pretenses...acted with the intent to defraud[,] and. . . used interstate wire communications in furtherance of the scheme.” ECF No. 319 at 20. Those legal elements established, the Court went on to detail the precise ways that Cammarata’s scheme “touch[ed] upon” securities transactions, going so far as to say the scheme “hinged upon” securities transactions. *Id.* at 23.¹ The

¹ In sum, “(i) the settlement distribution funds existed because of securities class actions or enforcement actions by the Securities and Exchange Commission; (ii) the settlement distribution funds were often held in securities until they were

facts and legal elements established upon Cammarata's criminal conviction were sufficient to grant summary judgment on the securities violation claim. The Court did not err in so ruling.

c. Service of Summary Judgment Motion

Cammarata further alleges that the Summary Judgment Order is "void" under Federal Rule of Civil Procedure 60(b)(4) because he never received noticed of the motion. ECF No. 353 at 11. To reiterate the procedural history, the SEC filed a motion for summary judgment on June 7, 2023. ECF No. 260. On July 3, 2023, Cammarata filed a motion which contended, *inter alia*, that he had not received a copy of the summary judgment motion. ECF No. 269 at 14. On July 7, 2023, the Court ordered the Clerk of Court to personally mail a copy of the motion to

liquidated and distributed to claimants; (iii) Cammarata obtained and misused trade data about securities transactions; (iv) Cammarata only had access to such trade data because of his role as an executive of a broker-dealer; (v) Defendants lied about who purchased securities; (vi) Defendants lied about who sold securities; (vii) Defendants lied about the price of securities purchased or sold; (viii) Defendants lied about the quantity of securities purchased or sold; (ix) Defendants lied about which entities cleared trades; (x) Cammarata used his expertise of the securities industry to guide AlphaPlus, by way of Cohen and Punturieri; (xi) Defendants submitted phony records of securities trades, including falsified brokerage records that used broker-dealers' logos to bolster their believability; (xii) Cammarata exploited his position as an executive of a broker-dealer to vouch for the fraudulent claims; (xiii) Sham Clients collected over \$40 million because of the fraudulent claims; and (xiv) the scheme had the effect of diminishing the funds available for the actual victims of the underlying securities fraud." ECF No. 319 at 23-24.

Cammarata. ECF No. 274. Cammarata filed a response in opposition to the motion for summary judgment on July 20, 2023. ECF No. 285. In its opinion, the Court stated that it had “confirmed that the mailing address used and the location which the Commission served Cammarata were both correct. Additionally, the Court has not heard Cammarata complain that he has not received the Motion in nearly six weeks, despite his other filings on the docket.” ECF No. 319 at 15 n.19. Cammarata was properly served with the SEC’s summary judgment motion.²

IV. CONCLUSION

For the foregoing reasons, Cammarata’s Motion (ECF No. 353) is DENIED. An appropriate Order will follow.

BY THE COURT:

/s/ Chad F. Kenney

CHAD F. KENNEY, JUDGE

Filed 04/02/24 (ECF No. 372)

² Cammarata also contends that the Court never ruled on his summary judgment motion, filed on December 12, 2022. ECF No. 183. As part of his response to the SEC’s summary judgment motion, Cammarata filed a cross-motion for partial summary judgment, which largely reiterated and referred back to his prior summary judgment motion. ECF No. 285. The Court denied that motion on July 28, 2023. ECF No. 294.

APPENDIX C

Financial Disclosure Reports (Form AO-10) of District Judge Chad F. Kenney, Cited Pages Report for calendar year 2018, page 4 of 7 (line 7, Apple Inc.; line 11, Boeing Co.; purchased 12/24/18)

FINANCIAL DISCLOSURE REPORT Page 4 of 7	Name of Person Reporting Kenney, Sr., Chad F.	Date of Report 07/29/2019
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets) Place "XX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Citizen's Bank (cash)	A	Interest	K	T					
2. Fidelity 500 Index Premium (FUSVX)	A	Dividend	J	T					
3. IRA #1 (H)									
4. FIDELITY GOVERNMENT CASH RESERVES (FDRXX) (CASH EQUIV)	A	Dividend	M	T	Open	12/17/18	N		
5. ALPHABET INC CAP STK CL A (GOOGL)		None	J	T	Buy	12/24/18	J		
6. AMGEN INC (AMGN)		None	J	T	Buy	12/24/18	J		
7. APPLE INC (AAPL)		None	J	T	Buy	12/24/18	J		
8. BECTON DICKINSON CO (BDX)		None	J	T	Buy	12/24/18	J		
9. BERKSHIRE HATHAWAY INC DEL CL B NEW (BRKB)		None	J	T	Buy	12/24/18	J		
10. BEST BUY INC (BBY)		None	J	T	Buy	12/24/18	J		
11. BOEING CO (BA)		None	J	T	Buy	12/24/18	J		
12. BROADRIDGE FINANCIAL SOLUTIONS LLC (BR)		None	J	T	Buy	12/24/18	J		
13. CISCO SYS INC COM (CSCO)		None	J	T	Buy	12/24/18	J		
14. CUMMINS INC (CMI)		None	J	T	Buy	12/24/18	J		
15. DANAHER CORP COM (DHR)		None	J	T	Buy	12/24/18	J		
16. DISCOVER FINL SVCS (DFS)		None	J	T	Buy	12/24/18	J		
17. DOLLAR TREE INC COM (DLTR)		None	J	T	Buy	12/24/18	J		

1. Income Gain Codes (See Columns B1 and D4)	A=\$1,000 or less F=\$50,001 - \$100,000 J=\$15,000 or less N=\$250,001 - \$500,000 P3=\$25,000,001 - \$50,000,000	B=\$1,001 - \$2,500 G=\$100,001 - \$1,000,000 K=\$15,001 - \$50,000 O=\$500,001 - \$1,000,000	C=\$2,501 - \$5,000 H1=\$1,000,001 - \$5,000,000 L=\$50,001 - \$100,000 P1=\$1,000,001 - \$5,000,000 P4=More than \$50,000,000	D=\$5,001 - \$15,000 H2=More than \$5,000,000 M=\$100,001 - \$250,000 P2=\$5,000,001 - \$25,000,000	E=\$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	N=\$250,001 - \$500,000 P3=\$25,000,001 - \$50,000,000	K=\$15,001 - \$50,000 O=\$500,001 - \$1,000,000	L=\$50,001 - \$100,000 P1=\$1,000,001 - \$5,000,000 P4=More than \$50,000,000	M=\$100,001 - \$250,000 P2=\$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q=Appraised U=Book Value	R=Cost (Real Estate Only) V=Other	S=Assessment W=Estimated	T=Cash Market	

Report for calendar year 2019, page 5 of 8 (line 32, Exxon Mobil Corp.; purchased 02/14/19)

FINANCIAL DISCLOSURE REPORT

Page 5 of 8

Name of Person Reporting

Kenney, Sr., Chad F.

Date of Report

01/29/2020

VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

☐ NONE (No reportable income, assets, or transactions.)

A Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18.					Sold (part)	05/16/19	J		
19. BOOKING HLDGS INC COM (BKNG)		None	J	T	Buy	03/04/19	J		
20. BROADRIDGE FINANCIAL SOLUTIONS LLC (BR)	A	Dividend	J	T	Buy (add'l)	02/14/19	J		
21. BUNZL SPON ADR EACH REP 1 ORD (BZLFY)	A	Dividend	J	T	Buy	12/05/19	J		
22. CISCO SYS INC COM (CSCO)	A	Dividend	J	T	Buy (add'l)	02/14/19	J		
23.					Sold (part)	05/16/19	J		
24. CUMMINS INC (CMI)	A	Dividend			Buy (add'l)	02/14/19	J		
25.					Sold (part)	05/16/19	J	A	
26.					Sold	12/05/19	J	B	
27. DANAHER CORP COM (DHR)	A	Dividend	K	T	Buy (add'l)	02/14/19	J		
28. DISCOVER FINL SVCS (DFS)	A	Dividend	K	T	Buy (add'l)	02/14/19	J		
29. DOLLAR TREE INC COM (DLTR)		None	J	T	Buy (add'l)	02/14/19	J		
30. EOG RESOURCES INC (EOG)	A	Dividend	J	T	Buy (add'l)	02/14/19	J		
31. ECOLAB INC (ECL)	A	Dividend	K	T	Buy (add'l)	02/14/19	J		
32. EXXON MOBIL CORP (XOM)		None			Buy (add'l)	02/14/19	J		
33.					Sold	05/08/19	J	A	
34. FEDEX CORP COM (FDX)	A	Dividend	J	T	Buy	01/18/19	J		

1 Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
2 Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3 Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

JOSEPH A. CAMMARATA, et al.,
Defendants.

Civil Action No. 21-cv-04845 (CFK)
Hon. Chad F. Kenney

**DEFENDANT'S MOTION TO ALTER OR
AMEND THE JUDGMENT PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 59(e)**

Defendant Joseph Cammarata, pro se, respectfully moves this Court under Federal Rule of Civil Procedure 59(e) to alter or amend its Order and Memorandum of September 9, 2026 (ECF Nos. 425, 426), which denied his motion for relief from a void judgment and void orders. This motion is timely, filed within twenty-eight days of the entry of the Order. It should be granted to correct clear errors of law and fact and to prevent manifest injustice.

STANDARD

A court may grant relief under Rule 59(e) to correct a clear error of law or fact or to prevent manifest injustice. *Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). A

judgment rests on clear error when it is premised on a factual finding the record refutes, or when it overlooks a dispositive, uncontested showing that compels the opposite result. This motion does not relitigate matters of mere disagreement. It identifies a specific finding that is impossible on the face of the record, and specific dispositive facts that the Commission never contested and the Court did not address, each of which independently renders the challenged orders void.

INTRODUCTION

This motion asks the Court to confront what its Memorandum did not. The Defendant has placed before this Court a series of specific, verifiable, and dispositive facts. The Commission has not refuted them. And the Memorandum of September 9, 2026 does not adjudicate them; it denies relief by repeating the single factual assertion the Defendant's motion proved false, that the Defendant was personally served on November 8, 2021, while remaining silent on the record evidence that makes that assertion impossible and on the due-process facts the Commission never contested.

The Court should understand the significance of that silence. Each fact the Memorandum passed over is not a technicality. Taken together, these facts establish that there was no valid service, no notice, no opportunity to be heard, no subject-matter jurisdiction, and no proper basis for the collateral estoppel on which liability was found. If these dispositive issues were addressed on their merits, they would establish that the orders and judgment

are void and that the underlying theory of fraud fails as a matter of law. A ruling that rests on a refuted fact and does not address the dispositive ones is clear error, and leaving it in place works a manifest injustice. This Court has the opportunity, on this motion, to address these issues directly and to correct the record. The Defendant respectfully submits that it should.

I. THE FINDING OF PERSONAL SERVICE ON NOVEMBER 8, 2021 IS IMPOSSIBLE ON THE RECORD, AND THE ERROR IS DISPOSITIVE.

The Memorandum denies relief in principal part on the finding that the Defendant “was served pursuant to Rule 4 on November 8, 2021 in person by the U.S. Marshals.” That finding cannot stand, because the record establishes that it is impossible, and the Defendant is entitled to an evidentiary hearing to prove it.

First, the Defendant states the true facts plainly. He was in fact served in the United States Marshals Service cellblock at 10:50 a.m., but on November 9, 2021, not November 8. He was produced to that cellblock only on November 9, when he was brought in connection with his detention hearing, and the papers were handed to him there that morning, after the proceedings of that day. The return of service (USM-285, ECF No. 10) nonetheless records personal service on November 8, 2021. That date is false. The Marshals’ own transport and custody records place the Defendant in the cellblock only on November 9; there is no docket entry, no court appearance, and no custody record placing him there on November 8. A

return that records service on a date the government's own records show the Defendant was not present is not proof of service; it is proof of a defective and altered return.

Second, the return bears the indicia of alteration on its face: the service date has been changed from a "9" to an "8," converting the true date of November 9 into the false date of November 8. The Defendant has raised that alteration squarely, and the Commission has never answered it. The whole of the evidence, the Marshals' records, the Defendant's sworn declarations, the Commission's own documents, and the altered face of the USM-285 itself, corroborates what the document plainly appears to be, which is a forgery.

Third, the Commission's own certificate of service refutes the finding. By the Commission's own filing, notice to the Defendant would be sent by first-class mail issued on November 9, 2021, the morning of the hearing. A party does not mail notice on November 9 to a person it claims already to have served in person on November 8. The Commission's own papers thus contradict the very finding the Court adopted. The impossibility is compounded by geography and simultaneity: the Defendant was in federal custody in Miami while the show-cause proceeding went forward in Philadelphia, two cities roughly one thousand miles apart, in parallel proceedings this same Court was overseeing.

This error is dispositive. Valid service, and the notice it provides, is the foundation of the Court's authority to proceed against a party. If the November 8 service

did not and could not occur, the Defendant was not properly before the Court when the challenged relief was entered, and the resulting orders are void for want of the process due. Because the finding of service rests on a return the record proves false and altered, the Defendant requests an evidentiary hearing at which the return of service, the Marshals' transport and custody records, and the circumstances of its execution may be examined. Where the authority of the Court turns on a contested and facially impossible return, an evidentiary hearing is not a courtesy; it is required.

II. THE COURT DID NOT ADDRESS THE UNCONTESTED SIMULTANEOUS HEARINGS, WHICH ALONE RENDER THE TEMPORARY RESTRAINING ORDER VOID.

The motion established, and the Commission did not deny, that on the morning of November 9, 2021 two federal proceedings went forward at the same time. In the Eastern District of Pennsylvania, the Commission's show-cause hearing on the temporary restraining order proceeded before this Court, and the Defendant was absent. At the same time, in the Southern District of Florida, the Defendant was personally present, in the custody of the United States Marshals, at his own contested detention hearing before a magistrate judge. A person in federal custody at his own detention hearing in one district cannot simultaneously appear and be heard in another. The Memorandum does not mention this fact at all.

The Defendant submits the relevant excerpts of both transcripts as exhibits so the Court may see the conflict on the face of the record. Exhibit A is the excerpt of the Philadelphia show-cause hearing transcript reflecting that the proceeding went forward on the morning of November 9, 2021. Exhibit B is the excerpt of the Southern District of Florida detention hearing transcript for the Defendant that same morning. Placed side by side, the two excerpts show a single defendant required to be in two federal courtrooms, in two districts, at the same time. The side-by-side record is powerful precisely because it is not argument; it is the government's own transcripts.

That conflict is dispositive. A restraining order that freezes a party's entire estate may not be entered or continued against a party who has been given no opportunity to be heard, where his absence is the direct result of the government's own decision to produce him elsewhere at the same hour. The simultaneous-hearing fact was placed squarely before the Court and was never contested. An uncontested, dispositive fact that the Court did not address is among the clearest grounds for relief under Rule 59(e). On this fact alone, the temporary restraining order was void when entered and continued, and every order that flowed from it, including the preliminary injunction and the judgment, is void as well.

III. THE DUE-PROCESS DEFECT WAS UNCONTESTED, AND A DENIAL OF DUE PROCESS IS NOT CURED BY LATER PARTICIPATION.

The Memorandum treats the Defendant's later conduct as curing the initial denial of due process, reasoning that after counsel appeared, the Defendant stipulated to the extension of the temporary restraining order and to the preliminary injunction and raised no objection at the time. That reasoning is clear legal error for two independent reasons.

First, a threshold denial of due process is not cured by subsequent participation. The orders were void when entered because they were entered without notice and without an opportunity to be heard. A void order is a nullity from the moment of its entry; it does not ripen into a valid one because the party, once belatedly drawn into the case, took steps within it. The premise that later stipulations retroactively supply the notice absent at the outset inverts the law of void orders.

Second, the defect was uncontested. The Commission did not deny the simultaneous hearings; it did not reconcile its first-class-mail certificate with its claim of prior personal service; and it did not answer the showing that the return of service is false and altered. Where the party bearing the burden declines to contest the facts that establish a due-process violation, those facts are established for purposes of the motion, and the violation stands. A denial of due process that is both established and dispositive cannot be passed over in silence.

IV. THE PURPORTED CONSENTS WERE NEVER THE DEFENDANT'S, AND EXCEEDED THE WRITTEN SCOPE OF COUNSEL'S ENGAGEMENT; JURISDICTION AND DUE

**PROCESS CANNOT BE WAIVED BY A
CONSENT THE DEFENDANT NEVER GAVE.**

The Memorandum rests heavily on the premise that the Defendant, through counsel, consented to the extension of the temporary restraining order and to the preliminary injunction. That premise fails on the law and on the record.

As a matter of law, subject-matter jurisdiction can never be created by consent or stipulation, and the waiver of a constitutional right must be knowing, intelligent, and voluntary. As a matter of the record, the Defendant did not personally consent to anything, and the attorney the Commission relies upon was not authorized to give the consent attributed to him.

The chronology is dispositive. The relevant attorney, Antonio Pozos, did not enter his appearance until November 29, 2021 (ECF No. 25). On November 9, 2021, when the void temporary restraining order proceedings occurred, the Defendant had no counsel of record at all. The due-process violation therefore cannot be laid at counsel's feet; it preceded counsel entirely.

When Mr. Pozos was engaged, the written scope of his engagement was narrow and specific. His November 23, 2021 engagement letter in this action retained him to "represent you in connection with your efforts to secure the release of funds subject to the Court's Temporary Restraining Order" in the SEC case. His December 3, 2021 letter, addressed to the parallel criminal case, confirmed that funds released from the freeze would be applied "to your

bill for services in the Criminal Case only.” Securing the release of frozen funds is the opposite of consenting to a preliminary injunction that continues the freeze over the Defendant’s entire estate. Nothing in either letter authorized counsel to litigate the merits, to concede that the Defendant had been properly served, or to stipulate that the Court possessed personal and subject-matter jurisdiction. In signing the stipulations that became ECF No. 66, counsel exceeded the written scope of the very engagement the Commission invokes.

The Defendant, moreover, repudiated that consent under oath. In his sworn filing (ECF No. 160), the Defendant stated that the consent was provided by his attorney without his knowledge or authorization, and he revoked it. A litigant cannot be found to have knowingly, intelligently, and voluntarily surrendered his property and his jurisdictional objections through a consent he never gave, never authorized, and disavowed under oath as soon as he learned of it. The Court’s reliance on that purported consent is clear error.

V. THE COLLATERAL ESTOPPEL FINDING WAS ERROR, AND THE COURT USED IT TO AVOID A TRIAL THE DEFENDANT DEMANDED.

The judgment of liability rested on collateral estoppel drawn from the criminal conviction, applied to the securities-law element that the fraud was “in connection with” the purchase or sale of a security. That application was error for several independent

reasons, and the Memorandum did not cure any of them.

First, this Court itself declined to find the securities element at criminal sentencing and expressly deferred it to this civil case. Ruling on the securities enhancement, the Court stated: “this Court will not apply this enhancement,” and explained, “It’s a close case that is better litigated in the S.E.C. case,” adding that it “can be better litigated in the S.E.C. case when that resumes.” *United States v. Cammarata*, No. 21-cr-427, Sentencing Tr. (June 6, 2023). Having declined to decide the securities question in the criminal case and having sent it to this one, the Court could not then use the criminal conviction to foreclose that same question here by collateral estoppel. The securities element was, by the Court’s own words, reserved for decision, not decided.

Second, collateral estoppel forecloses relitigation only of an issue that was actually litigated and necessarily decided in the prior proceeding. The Defendant was convicted of wire fraud, not securities fraud. Wire fraud and securities fraud have different elements: wire fraud requires a scheme to defraud and use of the wires, while securities fraud requires a material misrepresentation made “in connection with” the purchase or sale of a security. A wire-fraud conviction cannot supply the securities “in connection with” element, because that element is not a component of wire fraud and was never submitted to or necessarily decided by the criminal jury. It is not merely that the element was not actually litigated; it

is that a wire-fraud verdict is legally incapable of establishing the elements of securities fraud.

Third, the error is compounded by how the disposition came about. After the Court referred this action to mediation (ECF No. 168), the Defendant objected and asserted his right to a trial, stating that he intended to exercise that right and to expose the misconduct in the record (ECF No. 173); the mediation referral was then stricken (ECF No. 175). The action was resolved not by the trial the Defendant sought, but by summary judgment resting on collateral estoppel. The Supreme Court has confirmed that claims of this character implicate the Seventh Amendment right to a jury. *SEC v. Jarkesy*, 603 U.S. 109 (2024). Using collateral estoppel to supply an element that was never tried, in a case the Defendant asked to take to trial, both misapplied the doctrine and avoided the very adjudication the Constitution guarantees.

Fourth, the Court granted the Commission's summary judgment while the Defendant's own dispositive motion sat adjudicated and while the Defendant had never received the Commission's motion. The Defendant's motion directed at summary judgment (ECF No. 183, filed December 12, 2022) has never been adjudicated or reduced to an appealable order to this day. Meanwhile the Court granted the Commission's motion for summary judgment (ECF No. 260), which the Defendant never received, a fact he established on the record through his contemporaneous motions and sworn declarations. A party cannot be bound by a summary

judgment entered on a motion he never saw, while his own competing motion is left forever undecided.

VI. THE MEMORANDUM DID NOT ADJUDICATE THE RULE 12(h)(3) JURISDICTIONAL CHALLENGE, OR THE ABSENCE OF IRREPARABLE HARM, ON THE MERITS.

The Memorandum disposes of the Defendant's Rule 12(h)(3) challenge by restating the Court's prior conclusion that the misrepresentations were "in connection with" the sale of securities. Repeating a prior conclusion is not adjudicating the argument as re-presented. Subject-matter jurisdiction may be raised at any time and can never be waived or created by stipulation, and the Defendant's showing is that the conduct alleged, the filing of settlement claims by an assignee that held the claims as beneficial owner, is not a securities transaction at all. That showing is not answered by invoking the earlier ruling that made it. The jurisdictional question remains unadjudicated on its merits.

Nor has any court ever addressed the undisputed absence of the irreparable-harm showing that Rule 65 requires. A temporary restraining order and a preliminary injunction may issue only on a showing, among other things, of irreparable harm. Fed. R. Civ. P. 65(b)(1); Fed. R. Civ. P. 65(a). The application here made no such showing, and the point stands un rebutted on the record. An asset freeze entered without the required finding of irreparable harm is defective at its foundation, and the Court has never addressed this defect on the merits.

VII. THE COURT DID NOT ADDRESS THE REMAINING DISPOSITIVE GROUNDS, EACH OF WHICH IS PRESERVED IN FULL.

The motion presented additional independent grounds that the Memorandum did not address. The Defendant identifies each so that the record is unambiguous that they remain unadjudicated and are preserved for all further review.

First, the preliminary injunction independently fails the specificity command of Federal Rule of Civil Procedure 65(d)(1). It states no restraint of its own and instead borrows its terms by general incorporation of the earlier orders, including a temporary restraining order that was itself void and had expired by operation of law under Rule 65(b)(2). An injunction that borrows its specificity from a void and expired order has no valid foundation and is subject to vacatur. *Ford v. Kammerer*, 450 F.2d 279 (3d Cir. 1971); *Mallet & Co. v. Lacayo*, 16 F.4th 364 (3d Cir. 2021).

Second, the controlling authority of *Sprint Communications Co. v. APCC Services, Inc.*, 554 U.S. 269 (2008), forecloses the theory of liability. Under *Sprint*, an assignee of a claim may pursue it in its own name as the beneficial owner. The trades were real, were made by the Defendant, were lawfully assigned to a valid foreign entity, and were filed in that entity's name as the beneficial owner, as attested on every claim form. No court has ever applied, distinguished, or adjudicated *Sprint* against the Defendant's position.

Third, the Seventh Amendment jury-trial right recognized in *SEC v. Jarkesy*, 603 U.S. 109 (2024), was denied when the case was resolved by estoppel rather than the trial the Defendant demanded.

Fourth, a structural conflict disqualifies the appellate forum under 28 U.S.C. Section 455, and it has never been addressed. The problem is explicit and wholly improper. The wife of the Commission's lead prosecutor in this very case is not merely an attorney; she is the Assistant to the Executive Office of the United States Court of Appeals for the Third Circuit, the office responsible for supporting the judges of the court that sits over all four of the Defendant's appeals. She directly supports the very judges deciding the Defendant's cases, while her husband prosecutes him. Under 28 U.S.C. Section 455, *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988), and *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), that arrangement requires disqualification on an objective standard, and no reasonable observer could regard it as consistent with an impartial tribunal.

The consequences of that conflict are visible in an unmistakable pattern on the record. The Defendant's motions to recuse or to transfer his cases to an unconflicted court have been refused. His constitutional and due-process arguments have gone unaddressed. Dispositive matters have been disposed of by one-word denials that engage none of the issues raised. In No. 25-1188, the court sat on the matter for 361 days without any response from the government and then denied it per curiam without addressing a single one of the issues presented. In

No. 24-1381, the appeal has now been pending for over two and one-half years without any responsive brief from the Commission, after the Commission missed every filing deadline and obtained repeated extensions, the last a further sixty-day extension requested on September 12, 2025, followed by silence on the docket since. A court whose administrative office is staffed by the prosecutor's spouse does not respond, does not explain, and does not recuse; it delays and denies. That is precisely the appearance of partiality that Section 455 forbids.

The Defendant states, and this documented pattern bears out, that he has been unable to obtain a fair adjudication of the dispositive issues in any forum touching his cases. The pattern of orders in this very matter is deeply troubling, and it presents this Court an opportunity to begin correcting egregious error now, on a full record, rather than leaving that task to the Supreme Court on a more extensive review of the same refusals. See *United States v. Antar*, 53 F.3d 568 (3d Cir. 1995).

The Court's silence on these grounds does not resolve them. They are preserved in full.

VIII. THE MEMORANDUM'S RELIANCE ON RULE 62.1 IS INCONSISTENT WITH ITS MERITS DENIAL.

Finally, the Memorandum denies the motion on the merits and, in the same document, states that because a direct appeal is pending, the Court lacks authority to grant relief under Federal Rule of Civil Procedure 62.1(a). Those two rulings cannot coexist. Rule 62.1(a) gives a court that lacks present

authority to grant a motion three options: defer considering the motion, deny it, or state that it would grant the motion or that the motion raises a substantial issue. A court that recognizes a substantial issue but lacks present authority does not reach out to deny the motion on a factual finding the record refutes; it says so, so that the Court of Appeals may act. To the extent the Court reached the merits, it should correct the clear errors identified above. To the extent the Court relied on Rule 62.1(a), the record demonstrates, at the least, that this motion raises a substantial issue.

CONCLUSION

For the foregoing reasons, the Court should alter or amend its Order of September 9, 2026, and grant the relief sought in the underlying motion by declaring void the temporary restraining order (ECF No. 4), the orders extending it (ECF Nos. 16, 17), the stipulated preliminary injunction (ECF No. 66), and the final Order and Judgment (ECF No. 320), together with all orders and relief flowing from them. In the alternative, the Court should grant an evidentiary hearing on the service and due-process questions, and address on their merits each dispositive ground identified above.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'JC' with a stylized flourish.

Joseph Cammarata, Pro Se
Reg. No. 02555-506
Federal Prison Camp Montgomery
Maxwell Air Force Base
1001 Willow Street
Montgomery, AL 36112

Dated: September 14, 2026

Filed 09/14/26 (ECF No. 427)

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

v.

JOSEPH A. CAMMARATA, et al.,
Defendants.

Civil Action No. 21-cv-04845 (CFK)
Hon. Chad F. Kenney

**DEFENDANT'S REPLY IN SUPPORT OF HIS
MOTION TO ALTER OR AMEND THE
JUDGMENT PURSUANT TO FEDERAL RULE
OF CIVIL PROCEDURE 59(e)**

The Commission's Opposition does not answer the motion; it avoids it. It reframes a motion that identifies clear factual and legal error as a disfavored request for reconsideration, and then argues finality. But relabeling does not dispose of the central point: the Court's ruling rests on a factual finding, personal service on November 8, 2021, that is impossible on the record and that the Commission, given a second opportunity, still does not deny. What the Commission does not contest, it concedes.

**I. THE MOTION IS TIMELY, AS THE
COMMISSION'S OWN BRIEF CONCEDES.**

The Commission opens with a heading that the motion is time barred, then abandons it in its own footnote. As footnote 1 of the Opposition acknowledges, the Court's Memorandum and Order were entered on September 9, 2026, and the Defendant's motion was filed on September 14, 2026, well within the fourteen days that Local Rule of Civil Procedure 7.1(g) allows. The motion is timely. The Commission's suggestion that the motion is untimely because it does not fall within twenty-eight days of the January 23, 2024 judgment attacks a motion the Defendant did not file. The motion seeks alteration or amendment of the September 9, 2026 Order denying relief, not of the 2024 judgment in the abstract, and it is timely as to that Order under any applicable rule. The Commission concedes as much.

II. RECONSIDERATION CORRECTS CLEAR ERROR, AND AN IMPOSSIBLE FACT IS CLEAR ERROR.

However the motion is labeled, the governing question is the same: whether the Order rests on a clear error of law or fact or works a manifest injustice. It does. The Commission recites the standard that reconsideration is granted sparingly and may not be used to relitigate, but a standard is not an answer. The motion does not ask the Court to rethink a matter of judgment. It asks the Court to correct a finding, personal service on November 8, 2021, that cannot be true.

The Commission's response to that showing is to point back to the Return of Service and to observe that the document states November 8 in three places.

That is the whole of the Commission's argument, and it misses the point entirely. The motion's contention is that the Return of Service is false and altered. Answering a claim that a document is forged by citing the document's own contents assumes the very thing in dispute. That the false date appears three times on a false return proves nothing except that the alteration is consistent. The Commission does not address the Marshals' transport and custody records, which place the Defendant in the cellblock only on November 9. It does not address the alteration of the service date from a 9 to an 8. It does not explain how the Defendant could have been personally served in a Marshals cellblock on November 8 when he was not produced there until November 9. A finding that is impossible on the face of the record is the paradigm of clear error.

III. THE COMMISSION VIOLATED THE COURT'S OWN TEMPORARY RESTRAINING ORDER, WHICH EXPRESSLY REQUIRED THE PARTIES TO CONFER BEFORE THE HEARING.

Even if the Court were to credit the impossible November 8 service, the Commission's conduct violated the Court's own Order. The temporary restraining order (ECF No. 4, at 8) directed, in bold typeface that the Court used to emphasize its importance, that the "Parties shall meet and confer at least 24 hours before the hearing to discuss a recommended scheduling order." The Commission did not, and could not, confer with the Defendant twenty-four hours before the November 9 hearing, because the Defendant had not been served, had no

notice, and was in the custody of the United States Marshals in Miami. This defect has no cure. Even on the Commission's own impossible account, that the Defendant was somehow served on November 8, 2021 at 10:50 a.m., there was no conferral twenty-four hours before the hearing, and there could not have been. The Commission thus obtained sweeping ex parte relief in direct violation of a requirement the Court had set off in bold in its own Order. A party that ignores a condition the court emphasized on the face of its own extraordinary relief cannot then rely on that relief as valid.

IV. THE COMMISSION, FOR A SECOND TIME, DECLINES TO DENY THE DISPOSITIVE FACTS.

The most telling feature of the Opposition is what it still does not say. The Commission does not deny that on the morning of November 9, 2021, the show-cause hearing proceeded before this Court in Philadelphia while the Defendant was simultaneously in the custody of the United States Marshals at his detention hearing in Miami, roughly one thousand miles away. That fact is now established twice over: once by the Defendant's motion, which the Commission did not answer, and again by Exhibits A and B to the motion, the two hearing transcripts, which show on their face a single defendant required in two federal courtrooms in two districts at the same time. A party cannot be personally served in a cellblock on a day he was not there, and cannot be heard in Philadelphia while in custody in Miami. The Commission's silence on these

facts, having now had two opportunities to contest them, is a concession that they are true.

The Commission's treatment of its own certificate of service confirms the pattern. Rather than reconcile the certificate's statement that notice to the Defendant would go out by mail on November 9 with its claim of completed personal service on November 8, the Commission recasts the November 9 mailing as merely a copy of the filing. Even accepted, that recharacterization does not cure the impossibility the motion identifies; it simply relocates it. The Defendant was in Miami custody on November 9 and was not in the cellblock on November 8. No account of the mailing changes those facts.

V. THE COMMISSION MISSTATES THE MOTION ON WAIVER; THE DEFECT PRECEDED ANY COUNSEL.

The Commission repeats, in a footnote, that the Defendant was represented by competent counsel and consented to the temporary restraining order and preliminary injunction. That argument does not meet the motion. The dispositive due-process violation occurred on November 9, 2021. The attorney the Commission relies upon, Antonio Pozos, did not enter his appearance until November 29, 2021 (ECF No. 25). On the day the void proceedings occurred, the Defendant had no counsel of record at all, so no act of counsel can have waived the defect. And when counsel was later engaged, the written scope of his engagement was limited to securing the release of frozen funds; it did not authorize him to concede service or jurisdiction. Subject-matter

jurisdiction cannot be created by consent in any event, and the Defendant repudiated the purported consent under oath (ECF No. 160). The Commission does not engage any of this.

VI. THE SUMMARY JUDGMENT ITSELF WAS ENTERED WITHOUT DUE PROCESS, AND THE COMMISSION NOW ATTEMPTS TO REWRITE THE BASIS ON WHICH IT WAS GRANTED.

A. The threshold defect: the Defendant never received the Commission's summary judgment motion, and the record proves it.

Before any question of collateral estoppel or the securities nexus can be reached, there is a prior and dispositive defect that the Commission's Opposition simply ignores: the summary judgment against the Defendant was entered without notice or an opportunity to be heard. The Defendant never received the Commission's motion for summary judgment (ECF No. 260), the nearly 900-page filing on which the judgment rests. He said so at the time, and the record documents it at every step.

When the Defendant learned a motion had been filed against him but had not received it, he moved the Court to require compliance with its own orders regarding service (ECF No. 269). The Court responded by directing the Clerk to mail the Defendant a copy of the motion (ECF No. 274). The Defendant still did not receive it. The docket confirms why: mail addressed to the Defendant was returned to the Court by the United States Postal Service marked, in the Clerk's own entry, 'UNABLE

TO FORWARD, NOT AT FDC PHILADELPHIA,' among a series of returned and undeliverable mailings to the Defendant reflected throughout the docket. Forced to respond to a motion he had never seen, the Defendant filed an opposition (ECF No. 285) in which he stated explicitly that he had not received or been served with the Commission's motion and could only guess at its contents. To this day, the Defendant has never seen ECF No. 260.

This is not a technicality; it is the same species of defect as the forged return of service, and it is likewise proven impossible by the record. Just as the Marshals' records disprove the November 8 service, the Postal Service's returned mail and the legal-mail logs disprove any claim that the Defendant was served with the summary judgment motion. A summary judgment entered against a pro se, incarcerated litigant who never received the motion, whose non-receipt he documented in real time, and whose mail the Court's own docket shows was returned undelivered, cannot stand consistent with due process. That defect alone requires that the judgment be altered, and it renders everything that follows, including the debate the Commission now wishes to have about collateral estoppel versus the securities nexus, secondary to a violation the Commission does not even attempt to answer.

B. The Commission conflates two independent defects: the collateral estoppel was legally impossible, and there was never a securities nexus.

The Commission's treatment of the merits is a study in misdirection. It insists that the Defendant conflates collateral estoppel with summary judgment, and that the securities finding was not premised on collateral estoppel at all. He does not conflate anything, and the Commission's new account is contradicted by the Court's own opinion. The Defendant has asserted two separate and independent defects, and the Commission answers one by pointing at the other, hoping the Court will not notice the substitution.

The first defect. Collateral estoppel was not background to this case; it was the stated basis of the judgment. The Court's opinion opens with the words, 'Collateral estoppel looms large in this case.' ECF No. 319 at 2. The Court then held that 'the Commission is entitled to summary judgment on Count I because of collateral estoppel,' and applied issue preclusion from the wire-fraud conviction to the first two elements of the Section 10(b) claim, the misrepresentation and scienter elements. *Id.* at 17-21. When the Defendant later challenged that estoppel directly, the Court did not retreat from it or suggest it was unnecessary; it defended it, restating the preclusion elements and holding that estoppel applied 'regardless of whether the exact same elements are charged in both the criminal and civil' cases. ECF No. 372 at 5-6. A court does not defend at length a doctrine it did not rely upon. The Commission's present suggestion that the judgment 'was not premised on collateral estoppel' cannot be reconciled with the opinion's opening line, its

holding, or the Court's later defense of the estoppel when it was attacked.

And the estoppel was legally impossible. Collateral estoppel forecloses only an issue identical to one actually litigated and necessarily decided in the prior proceeding. Wire fraud and securities fraud are different offenses with different elements. The elements of a Section 10(b) securities-fraud claim were never submitted to the criminal jury, never actually litigated there, and never necessarily decided by a wire-fraud verdict. Preclusion cannot manufacture a securities-fraud finding out of a wire-fraud conviction. The Court itself signaled the instability of the ground when it added that 'even if collateral estoppel did not apply,' the result would be the same, ECF No. 319 at 21, the kind of fallback a court supplies only when it doubts its primary basis. It is the Commission, not the Defendant, that must now defend the failed prongs of that estoppel, and it does not.

The second defect, separate and additional. Even setting the estoppel entirely aside, there was never any conduct in connection with the purchase or sale of a security, and the Defendant proved it in his own motion long before the Commission prevailed on the point. On December 12, 2022, the Defendant filed his own motion for summary judgment (ECF No. 183), which demonstrated that his conduct bore no securities nexus. That motion has never been adjudicated, and remains undecided to this day. Eighteen months later, the Court granted the Commission summary judgment on the very issue the Defendant's unadjudicated motion had already

addressed, without ever ruling on the Defendant's motion. The securities-nexus holding rests on a single theory: that settlement administrators, in at least 130 instances, liquidated money-market securities to pay the Sham Clients' claims. ECF No. 319 at 23. The Court held this satisfied *Chadbourn & Parke L.L.P. v. Troice*, 571 U.S. 377 (2014), which requires that the misrepresentation be material to a decision by one or more individuals to buy or sell a covered security. *Id.* at 387. It is not. A settlement administrator's back-end liquidation of money-market holdings to satisfy a claim is not an investment decision to purchase or sell a security, and it was induced by no misrepresentation. No investor was deceived into buying or selling anything. The administrators disbursed settlement funds; any liquidation was a ministerial consequence of paying a claim. Under *Troice's* own limiting principle, quoted by the Court, that is not a misrepresentation made in connection with the purchase or sale of a security. The liquidation would have occurred however the fund was paid, regardless of the claimant.

These are two independent holes, and each is fatal on its own. The estoppel cannot supply the first two elements because a wire-fraud conviction is not a securities-fraud adjudication. And the securities nexus cannot supply the third element because a claims administrator's disbursement is not an investment decision, as the Defendant's own unadjudicated motion established. The Defendant's conduct, the lawful assignment of real trades to an entity that filed claims in its own name as the

beneficial owner under *Sprint Communications Co. v. APCC Services, Inc.*, 554 U.S. 269 (2008), cannot as a matter of law satisfy the securities nexus. The Commission's response is to blur the two defects together and hope the blur passes for a rebuttal. When a litigant cannot meet an argument, it recharacterizes the argument; that is what the Commission has done here. Both defects remain, atop a summary judgment the Defendant was never served with, and the judgment cannot stand.

VII. THE DISPOSITIVE GROUNDS THE COMMISSION AND THE COURT HAVE NEVER ADDRESSED, EACH INDEPENDENTLY FATAL.

The Defendant's motion identified several independent grounds, each dispositive on its own, that neither the Commission nor the Court has ever addressed on the merits. Their persistent refusal to engage these grounds, over years and across filings, is itself remarkable, because each one, if addressed honestly, ends this case.

A. Rule 65(d)(1) specificity.

The preliminary injunction states no restraint of its own. It borrows its terms by general incorporation of the earlier orders, in direct violation of Rule 65(d)(1) (C), which forbids describing restrained conduct 'by referring to the complaint or other document.' An injunction that must borrow its specificity from another document, and here from a temporary restraining order that was itself void and expired, is subject to vacatur. *Ford v. Kammerer*, 450 F.2d 279 (3d Cir. 1971); *Mallet & Co. v. Lacayo*, 16 F.4th 364

(3d Cir. 2021). The Commission has never answered this.

B. The temporary restraining order expired by operation of law.

A temporary restraining order expires by its own force under Rule 65(b)(2), which permits a maximum duration of fourteen days plus one like extension for good cause. The temporary restraining order here had expired as a matter of law no later than November 24, 2021. Everything the Commission built upon it after that date rested on an order that no longer existed. The Commission has never addressed the expiration, because it cannot.

C. The absence of any required showing of irreparable harm.

A temporary restraining order and a preliminary injunction may issue only upon a showing of irreparable harm. Fed. R. Civ. P. 65(b), 65(a). The application here made no such showing, and the deficiency stands unrebutted on the record. An asset freeze imposed without the required finding of irreparable harm is defective at its foundation. No court has ever addressed this omission.

D. The denial of the Seventh Amendment right to a jury.

The Defendant objected to mediation and asserted his right to a trial (ECF No. 173). The case was then resolved by summary judgment resting on collateral estoppel rather than the trial he sought. The Supreme Court has since confirmed that Commission enforcement claims of this character implicate the

Seventh Amendment right to a jury. SEC v. Jarkesy, 603 U.S. 109 (2024). That right was denied here, and neither the Commission nor the Court has addressed it.

E. The uncontested Section 455 disqualification of the forum.

The Commission's lead counsel is married to a senior officer of the Executive Office of the Court of Appeals for the Third Circuit, the office that supports the very judges deciding all four of the Defendant's appeals. Under 28 U.S.C. Section 455, *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988), and *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), that structural conflict requires disqualification on an objective standard. The Defendant's motions to recuse or transfer have been denied without engagement, one appeal has sat for 361 days without a government response and was denied per curiam without reaching a single issue, and another has been pending over two and one-half years with no responsive brief after repeated extensions. The Commission does not deny the conflict. It says nothing at all. An uncontested, structural disqualification does not disappear because it is met with silence.

VIII. CORRECTION IS NECESSARY TO PRESERVE THE INTEGRITY OF THESE PROCEEDINGS.

Beyond each discrete legal and factual error, there is a larger reason the Court should act. The Supreme Court has instructed that error warrants correction where leaving it uncorrected would 'seriously affect

the fairness, integrity or public reputation of judicial proceedings.’ *United States v. Olano*, 507 U.S. 725, 736 (1993) (quoting *United States v. Atkinson*, 297 U.S. 157, 160 (1936)). That concern is independent of any question of ultimate innocence; it protects the standing of the judicial process itself. A judgment left in place upon a service finding that is impossible on the record, upon a collateral estoppel the Court invoked and defended but that fails on every prong, and upon a summary judgment the Defendant was never served with and still has never seen, is precisely the kind of error that, uncorrected, damages the fairness and public reputation of these proceedings. The Court can and should correct it now.

CONCLUSION

The motion should be granted. The Court should alter or amend its Order of September 9, 2026, declare the challenged orders and judgment void, or in the alternative grant an evidentiary hearing on service and due process, including the non-receipt of ECF No. 260, and address on their merits the dispositive grounds the Commission has left unanswered.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'JC' with a stylized flourish.

Joseph Cammarata, Pro Se
Reg. No. 02555-506
FCI Atlanta
Federal Correctional Institution
P.O. Box 150160
Atlanta, GA 30315

Dated: September 28, 2026

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