No. 26-5915

IN THE SUPREME COURT OF THE UNITED STATES

GEORGE GEORGIOU,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S RULE 15.8 SUPPLEMENTAL BRIEF

Pursuant to Supreme Court Rule 15.8, Petitioner respectfully calls the Court's attention to intervening matter not available at the time the petition was filed: two orders of the United States District Court for the Eastern District of Pennsylvania, entered September 28 and October 14, 2026, in *United States v. Georgiou*, No. 2:09-cr-00088, ECF 717 and ECF 722, and the docketing of the resulting appeal in the Third Circuit, No. 26-3549, listed for possible summary action. These rulings bear directly on Questions Three and Four.

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I. ECF 717 — September 28, 2026

On September 28, 2026, the district court (Quiñones Alejandro, J.) issued a 29-page memorandum opinion denying Petitioner's motion for relief under Federal Rule of Civil Procedure 60(b), ECF 710, filed May 18, 2026. That motion raised the same structural claims presented in Questions Three and Four: that the formally disqualified prosecutor controlled the § 2255 proceedings examining his own conflict, and that the presiding judge's impartiality was never adjudicated on the merits.

ECF 717 held that the court lacked jurisdiction, classifying the motion as an unauthorized successive habeas petition. ECF 717 at 7-15. It then proceeded, 'in the interest of judicial economy,' to address the structural claims in the alternative and reject them. *Id.* at 15-29. It was the first time in eight years of post-conviction litigation that any court engaged substantively with either structural claim.

A court that lacks jurisdiction cannot issue binding merits findings. "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94 (1998) (quoting *Ex parte McCardle*, 7 Wall. 506, 514 (1869)). "Hypothetical jurisdiction produces nothing more than a hypothetical

judgment — which comes to the same thing as an advisory opinion," and for a court to pronounce on the merits "when it has no jurisdiction to do so is, by very definition, for a court to act ultra vires." *Id.* at 101. The alternative disposition in ECF 717 is advisory. It also did not apply the governing constitutional standards: the opinion does not cite 28 U.S.C. § 455(a), *Tumey v. Ohio*, 273 U.S. 510 (1927), *In re Murchison*, 349 U.S. 133 (1955), or *Williams v. Pennsylvania*, 579 U.S. 1 (2016). It conducted no evidentiary hearing. And it ruled without any response from the government: by the court's own account, the government filed no opposition to the Rule 60(b) motion, requested sixty days to do so on August 24, 2026, and Petitioner opposed that request on August 28. ECF 717 at 3 (citing ECF 712, 714, 716). The court ruled on September 28 — before the sixty days had run and without resolving the request. The first substantive engagement with the structural claims in eight years was thus made on an unopposed motion, against the movant, by a court that had just held it had no power to act.

The order's scope. ECF 717 found AUSA Lappen's participation "before and after the evidentiary hearing" permissible because ECF 413 was limited to "the evidentiary hearing." ECF 717 at 16-22. Question Three does not depend on the order's scope; it rests on the categorical rule against an interested prosecutor, *Young*

v. United States ex rel. Vuitton et Fils S.A., 481 U.S. 787, 814 (1987), which no order confers and no order can waive. But the order was not honored on its own terms. Mr. Lappen obtained his seat at counsel table on the representation that he "will not serve as the government's attorney or advocate at this hearing." ECF 421 at 5. He then told the court, on the record, that he had "been involved in" the government's objections. Hr. Tr. 11/16/17 at 135. When Petitioner moved mid-hearing to stop him, the government's response did not deny the conduct; it stated that he "has engaged with AUSA Bonney on numerous issues as they arise." ECF 496 at 3; *see* ECF 490 ¶¶ 5-6; ECF 498. ECF 717 did not address that record. Its premise — a narrow order, honored — is not what the transcript shows.

A clarification of the record. The petition states that Judge Kelly's bench statement — "So what does that have to do with [Georgiou] committing this massive fraud?" — was made "with the jury present and before verdict." ECF 717 characterized the exchange as occurring at sidebar, in a discussion with counsel. ECF 717 at 23-24. The two descriptions are consistent. The transcript confirms a sidebar was convened and later ended; the jury was present in the courtroom throughout. ECF 717 did not find that the jury was absent or unable to hear the exchange, and

whether any juror heard it is not established by the record. The petition did not assert that the remark was addressed to the jury.

The transcript ECF 717 cited supplies context the petition did not have room to include. The prosecutor who would later be disqualified — then trial counsel — called the sidebar and argued that the liquidation at issue was "a result of exactly what George Georgiou had done in his fraud in this case." Trial Tr. Feb. 1, 2010, at 214-16 (ECF 176-1 at 72-74). When defense counsel pointed to contrary testimony from the government's own witness, the court asked what it had to do with "your client's committing this massive fraud," then said, "So what? Your guy never made any payments at all, did he?" and cut off counsel's answer: "Oh, come on." *Id.* at 216-17. The court adopted the prosecutor's characterization of the defendant's guilt mid-trial, before verdict, and later presided over the examination of that same prosecutor's conduct.

None of this affects Question Four. The governing standard under § 455(a) asks whether a reasonable observer, knowing all the circumstances, would question the judge's impartiality — not whether a jury heard a particular remark. *Liteky v. United States*, 510 U.S. 540, 555 (1994); *United States v. Antar*, 53 F.3d 568, 573-76 (3d Cir. 1995). That question remains open and undefended.

II. ECF 722 — October 14, 2026

On October 14, 2026, the same court denied a certificate of appealability by incorporating ECF 717 — treating its alternative findings as a merits adjudication sufficient to foreclose appellate review. ECF 722. But ECF 717 held the court lacked jurisdiction. ECF 722 cannot be reconciled with ECF 717: the court disclaimed authority to decide the structural claims and then invoked its own non-decision as grounds to deny review of them. The appeal is docketed in the Third Circuit as No. 26-3549 and has been listed for possible summary action under I.O.P. 10.6. If the Third Circuit summarily affirms, it will be the third summary disposition of these structural claims without merits analysis.

III. Bearing on the Petition

These rulings confirm rather than resolve Questions Three and Four. The government has still never defended the merits of the disqualified prosecutor claim or the judicial bias claim in any filing at any level. The first court to engage with those claims did so while disclaiming jurisdiction, without the governing standards, and without a hearing — and then used that engagement to deny appellate review. That is the pattern the petition asks this Court to address. On November 2, 2026, Petitioner

filed a petition for a writ of certiorari in the related civil enforcement action, *Georgiou v. Securities and Exchange Commission* (3d Cir. No. 23-1751), presenting the same structural claims as grounds for denying collateral estoppel to the conviction. The petition should be granted.

Respectfully submitted,



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