26-6136

No. _____

ORIGINAL

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

DANIEL MACKEY,

Petitioner,

v.

JOANNA OLEJNICZAK,

Respondent.

On Petition for a Writ of Certiorari to the
Court of Appeal of the State of California,
Fourth Appellate District, Division Three

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Former Judge Israel Claustro presided over Petitioner's domestic-violence and child-custody hearing in July 2024 while concealing a federal felony to which he pleaded guilty in January 2026, resigning from the bench the same day. By then the time to appeal his orders had long expired. The California Court of Appeal dismissed Petitioner's appeals as untimely, held that "[a]ppellant may not create appellate jurisdiction for untimely appeals by asserting the challenged orders are void," expressly declined to say whether the orders were void, and noted that a motion in the trial court remained available without expressing any view on its merit. The Supreme Court of California denied review. The question presented is:

Whether the Due Process Clause of the Fourteenth Amendment requires a State to afford some procedural mechanism, subject to appellate review, through which a litigant may raise a substantial claim that the judge who decided his case was constitutionally disqualified by criminal conduct the judge concealed, where the facts supporting the claim could not have been discovered until after the ordinary time to appeal had run, and where the State's appellate courts have dismissed the claim as untimely without reaching it, pointing only to a trial-court motion whose availability for such a claim is unsettled under state law.

Subsidiary questions, should the Court find that the above warrants plenary review:

1. Whether *Rippo v. Baker*, 580 U.S. 285 (2017)—which holds that the Due Process Clause guarantees an objectively impartial tribunal—together with the principle this Court applied in *Bracy v. Gramley*, 520 U.S. 899 (1997), in permitting a habeas petitioner to develop a comparable bias claim through discovery before being held to his ultimate burden of proof, is satisfied by a State's direction to file a fresh motion in the trial court under a provision whose availability for a claim of this kind is unsettled under state law, with appellate review available only from a denial and no tolling of the clock that has run in the interim.

2. Whether *Bowles v. Russell*, 551 U.S. 205 (2007), which holds that courts lack authority to create equitable exceptions to a jurisdictional filing deadline, applies with the same force where

the litigant's claim could not have been formulated at all before the deadline expired, because the fact giving rise to it was concealed by the very judicial officer whose conduct is at issue—or whether that circumstance instead bears on when such a claim accrues, a question *Bowles* did not present or decide.

LIST OF PARTIES

The parties to the proceeding in the Court of Appeal of the State of California, Fourth Appellate District, Division Three, No. G066480, whose judgment is sought to be reviewed, were Daniel Mackey, Appellant below and Petitioner here, and Joanna Olejniczak, Respondent below and here. Both are natural persons; neither has a stock ticker symbol. All parties appear in the caption of the case on the cover page.

CORPORATE DISCLOSURE STATEMENT

No party is a corporation. No corporate disclosure statement is required under Rule 29.6.

RELATED PROCEEDINGS

All proceedings directly related to this case arise from Orange County Superior Court Case No. 22P000008.

Daniel Mackey v. Joanna Olejniczak, No. 22P000008, Superior Court of California, County of Orange. The orders of former Judge Claustro challenged by Petitioner's six notices of appeal were entered on July 25, 2024 (domestic violence restraining order and custody orders); September 3, 2024; November 20, 2024, as modified November 22, 2024; December 6, 2024 (child custody); and October 7, 2025 (first amended restraining order). The action remains pending in the Superior Court; no final judgment has been entered.

Mackey v. Olejniczak, No. G066480, Court of Appeal of the State of California, Fourth Appellate District, Division Three. Order entered April 16, 2026, dismissing five of six notices of appeal as untimely (the judgment for which review is sought). Order entered May 4, 2026, denying petition for rehearing, motion for constructive filing of notice of appeal, and request for judicial notice. Order entered June 25, 2026, dismissing the remaining notice of appeal as taken from a nonappealable stipulated order (review not sought). Remittitur issued July 29, 2026.

Mackey v. Olejniczak, No. S296834, Supreme Court of California. Petition for review of the April 16, 2026 order denied July 8, 2026.

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of Rule 14.1(b)(iii).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Daniel Mackey respectfully petitions for a writ of certiorari to review the order of the Court of Appeal of the State of California, Fourth Appellate District, Division Three, entered April 16, 2026, in Case No. G066480.

OPINIONS BELOW

The order of the Court of Appeal of the State of California, Fourth Appellate District, Division Three, filed April 16, 2026, dismissing five of Petitioner's six notices of appeal as untimely, is unpublished and is reproduced at App. 2–5. The order of the same court filed May 4, 2026, denying Petitioner's petition for rehearing, motion for constructive filing of notice of appeal, and request for judicial notice, is unpublished and is reproduced at App. 9. The order of the Supreme Court of California denying Petitioner's petition for review, entered July 8, 2026 (No. S296834), is unreported and is reproduced at App. 7.

A separate order of the Court of Appeal filed June 25, 2026, dismissed Petitioner's sixth notice of appeal, addressed to an October 7, 2025 order, on the independent ground that it was taken from a nonappealable stipulated order. Petitioner did not seek review of that order in the Supreme Court of California, and it is not a judgment under review here. It is described in the Statement of the Case for completeness only; no relief is sought with respect to it.

JURISDICTION

The Court of Appeal entered the order sought to be reviewed on April 16, 2026. App. 2. Petitioner's timely petition for rehearing was denied on May 4, 2026. App. 9. The Supreme Court of California denied Petitioner's timely petition for review on July 8, 2026. App. 7. No extension of time to file this petition was sought or granted. This petition is filed within 90 days of the order denying discretionary review. Sup. Ct. R. 13.1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

Section 1257(a) extends this Court's jurisdiction to "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had," and this Court

ordinarily reviews a federal question that the state courts have decided. Petitioner addresses that point directly rather than eliding it.

No California court decided whether former Judge Claustro was constitutionally disqualified or whether his orders are void. The Court of Appeal said so expressly in the order under review: "our intention is solely to make clear that the issue of alleged voidness is not properly before us." App. 5. What that court did decide—and reject—was Petitioner's contention that "considerations of due process should trump appellate deadlines" and required the court to reach the disqualification claim, or to treat the appeals as a writ petition, notwithstanding the lapse of the appeal period: "[a]ppellant may not create appellate jurisdiction for untimely appeals by asserting the challenged orders are void." App. 4. That procedural ruling—that the Due Process Clause did not require the appellate court to entertain, by direct appeal or by writ, a claim that could not have been raised before the appeal period closed—is the federal ruling Petitioner asks this Court to review. The merits of the disqualification claim have never been decided, and Petitioner does not ask this Court to decide them. The Supreme Court of California's summary denial of review adds nothing on either score; by analogy, this Court has long said of its own discretionary denials that "[t]he denial of a writ of certiorari imports no expression of opinion upon the merits of the case." *United States v. Carver*, 260 U.S. 482, 490 (1923) (Holmes, J.).

That posture is a reason review is warranted, not a reason it is barred.

The dismissal below rests on California Rules of Court, rule 8.104, a state procedural rule, and Petitioner recognizes that this Court does not review a state-court judgment resting on an adequate and independent state ground. That doctrine does not bar review here. "[T]he adequacy of state procedural bars to the assertion of federal questions" is "itself a federal question," *Lee v. Kemna*, 534 U.S. 362, 375 (2002) (internal quotation marks omitted), and the federal question presented is precisely whether the State may apply its appellate deadline to foreclose a claim whose factual predicate was concealed, by the judicial officer whose conduct is at issue, until after that deadline had run. A procedural rule that is sound in general is not an

adequate ground in the "exceptional cases in which exorbitant application of a generally sound rule renders the state ground inadequate to stop consideration of a federal question," *id.* at 376, or where the rule required the litigant to raise his federal claim at a time when he had no realistic opportunity to do so, *Reece v. Georgia*, 350 U.S. 85, 89–90 (1955) (state rule requiring a challenge before indictment could not bar review where it was "utterly unrealistic to say that he had such opportunity"); *see Michel v. Louisiana*, 350 U.S. 91, 93, 95 (1955) (the test is whether the litigant has had "a reasonable opportunity to have the issue as to the claimed right heard and determined by the state court" (internal quotation marks omitted); applying that test and finding the opportunity adequate on the facts before it). Petitioner filed his six notices of appeal within two weeks of the first court filing to charge former Judge Claustro; no application of rule 8.104 could have been timely as to a claim resting on facts that the judge himself concealed from the litigants before him and that were not established of record until long after the period had run. The federal contention was, moreover, squarely presented to and rejected by the Court of Appeal, which described Petitioner's argument that "considerations of due process should trump appellate deadlines" and dismissed the appeals nonetheless. App. 4.

The judgment below is also final within the meaning of section 1257(a). The Court of Appeal's dismissal finally disposed of every appeal from the 2024 orders; the Supreme Court of California declined review; and the remittitur has issued. No California court can now review those orders on direct appeal, and the federal ruling described above—that due process did not require the appellate court to reach the disqualification claim—will not be revisited in any later state proceeding: a motion under section 473(d) would present a different question (whether the orders are void) in a different posture, and an appeal from its denial would review that ruling, not this one. The continued pendency of the underlying family-law case therefore does not defeat finality. This Court takes a pragmatic approach to finality under section 1257 and has treated a state-court disposition of a federal claim as final where later review of the federal issue "cannot be had, whatever the ultimate outcome of the case." *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 477, 481, 486–487 (1975). And the 2024 orders continue to govern Petitioner's relationship

with his children: Respondent has held sole legal and physical custody since the July 25, 2024 order; the restraining order first entered that day has since been amended and extended by a successor judge and remains in effect today; and on April 1, 2026, that judge suspended Petitioner's visitation and telephone contact with the children pending further proceedings; Petitioner has had no visitation with his children since. (Super. Ct. Minute Order, Apr. 1, 2026; Second Amended Restraining Order After Hearing, Apr. 1, 2026.) Each of those later orders rests on the foundation laid on July 25, 2024—the restraining order could be renewed only because it had first been issued, and the suspension of visitation presupposes the award of sole custody to Respondent—so relief from the dismissal below, and ultimately from the 2024 orders, would, Petitioner submits, reach the restrictions he lives under today.

Petitioner is aware that the Court of Appeal pointed to a motion to vacate under Code of Civil Procedure section 473, subdivision (d), as a vehicle for his claim in the trial court, and he has elected to seek this Court's review before filing it. That sequencing is deliberate, for two reasons Petitioner states plainly.

First, whether a section 473(d) motion is available at all for orders entered by a disqualified judge is itself unsettled. Section 473(d) authorizes a court to set aside a "void judgment or order"; it does not reach an order that is merely voidable. California's intermediate appellate courts are divided over whether a disqualified judge's rulings are void or merely voidable, and the most recent decision sides with the voidable line without addressing the Supreme Court of California's contrary holding in *Cadenasso*. (See Part II.D, *infra*.) If that line controls, the motion to which the Court of Appeal pointed may not lie at all for the claim Petitioner seeks to raise. The Court of Appeal expressed no view on that question, and no California court has decided it.

Second, as a matter of timing: this Court's Rule 13.1 period expires 90 days after the July 8, 2026 denial of review, regardless of what happens in the trial court. By contrast, whether any deadline governs a section 473(d) motion premised on a judicial officer's concealed disqualifying conduct is unsettled under California law. In *California Capital Insurance Co. v. Hoehn*, 17

Cal.5th 207 (2024), the Supreme Court of California rejected the judicially created "reasonable time" limitation—with its borrowed two-year outer limit—that lower courts had long applied to section 473(d) motions resting on evidence outside the judgment roll, holding that the rule "lacks either a statutory basis or a clear and credible rationale," *id.* at 225, and disapproving the line of decisions that had imposed it, *id.* at 226. *Hoehn* involved a default judgment alleged to be void for defective service, and the Legislature's most recent amendment to section 473, operative January 1, 2027, guarantees an unlimited period for that one category. But *Hoehn*'s holding rests on the absence of any statutory basis for the judge-made limitation, not on anything peculiar to service defects, and the amendment opens with "[n]otwithstanding any other requirements of this section"—the language of an override for one category, not of a limit on the rest. *Hoehn*'s reasoning—that the text of section 473(d) draws no distinction between voidness apparent on the face of the record and voidness shown by extrinsic evidence—is not by its terms confined to service defects, and would extend, if these orders are void in the relevant sense, to orders entered by a judicial officer who concealed a disqualifying federal felony. But *Hoehn* expressly left open whether a movant must act with reasonable diligence after learning of the judgment, *id.* at 225 n.11, and whether a California court would extend *Hoehn* to a disqualification-based claim at all is a genuinely open question that Petitioner does not purport to resolve here. That uncertainty is itself a reason to pursue this Court's review on the one avenue with a rule-certain deadline. Petitioner will pursue the section 473(d) motion in the trial court regardless of this Court's disposition, and does not treat the uncertainty as license to defer it indefinitely.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides, in relevant part:

> "No state shall . . . deprive any person of life, liberty, or property, without due process of law . . . ."

U.S. Const. amend. XIV, § 1.

Title 28, United States Code, section 1257(a) provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

California Rules of Court, rule 8.104(a)(1), provides, in relevant part:

> "[A] notice of appeal must be filed on or before the earliest of: (A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled 'Notice of Entry' of judgment or a filed-endorsed copy of the judgment, showing the date either was served; (B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled 'Notice of Entry' of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or (C) 180 days after entry of judgment."

California Rules of Court, rule 8.104(b), provides:

> "Except as provided in rule 8.66, no court may extend the time to file a notice of appeal. If a notice of appeal is filed late, the reviewing court must dismiss the appeal."

California Code of Civil Procedure section 473, subdivision (d), provides:

> "The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order."

Section 473 as currently in effect provides, in subdivision (e), that it "shall remain in effect only until January 1, 2027, and as of that date is repealed." A successor section 473, operative January 1, 2027, contains an identical subdivision (d) and adds, in subdivision (e): "Notwithstanding any other requirements of this section, a party to an action may bring a motion to vacate a default judgment that is void for lack of proper service at any time after entry of the judgment."

California Code of Civil Procedure section 170.3, subdivision (b)(4), provides:

> "If grounds for disqualification are first learned of or arise after the judge has made one or more rulings in a proceeding, but before the judge has completed judicial action in a proceeding, the judge shall, unless the disqualification be

> waived, disqualify himself or herself, but in the absence of good cause the rulings he or she has made up to that time shall not be set aside by the judge who replaces the disqualified judge."

Title 28, United States Code, section 2244(d)(1)(D), provides that the one-year limitation period for an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court shall run from the latest of, among other dates:

> "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence."

STATEMENT OF THE CASE

A. The Restraining-Order Proceeding Before Judge Claustro

Petitioner Daniel Mackey is the father of two minor children. In April 2022, the parties stipulated to joint legal and physical custody on a week-on, week-off schedule in a paternity proceeding pending in the Superior Court of California, County of Orange, Case No. 22P000008. (Reporter's Transcript, July 25, 2024 ("Tr."), 165:17–24.)

In June 2024, Respondent Joanna Olejniczak filed a request for a domestic violence restraining order. (Tr. 161:12–15.) The hearing was held on July 25, 2024, before the Honorable Israel Claustro. At the outset, the court allotted each side 90 minutes "to complete their case, direct and cross-examination." (Tr. 5:15–17.) When the examination of Respondent's witnesses concluded, the court announced that both sides had "exhausted" their time. (Tr. 153:24–25.) Petitioner's counsel, who believed he had a few minutes remaining and "one question for my client," withdrew the request and called no further witnesses; Petitioner did not testify. (Tr. 154:3–14.) The court then permitted Respondent to retake the stand "on rebuttal," where she testified about a text message and attachment not previously in evidence, over Petitioner's objection that the document itself was not visible. (Tr. 154:15–156:9.)

In ruling, the court found that Respondent was "credible in some areas and not credible in other areas," that her statements on cross-examination "were inconsistent," and that the "late reporting of a number of these incidents" was of concern. (Tr. 161:21–162:3.) Petitioner's counsel had argued in closing that the request was financially motivated: Respondent had "spent

$45,000 over a course of four months at the end of 2023," Petitioner had exercised a contractual right to equalize that spending against support, and the restraining-order request followed. (Tr. 161:6–19.) The court responded that it was "concerned about the financial aspect that, in my mind, tends to prove that there is some other motive." (Tr. 164:13–15.) It nonetheless found "evidence of domestic violence," issued a one-year restraining order, and modified the parties' stipulated joint custody, awarding Respondent sole legal and sole physical custody and limiting Petitioner to alternate weekends. (Tr. 164:16–21, 165:2–4, 167:1–8.) The deputy who had arrested Petitioner, by contrast, testified that the only charge he sought was a misdemeanor under Penal Code section 415(2), disturbing the peace by loud and unreasonable noise; that his report contained no indication Petitioner had made any loud or unreasonable noise; that he had requested no domestic-violence charge; and that the emergency protective order obtained at the scene was limited to "peaceful contact." (Tr. 19:24–20:1, 28:16–26, 30:2–22.)

No notice of appeal from the July 25, 2024 order was filed within the time prescribed by California Rules of Court, rule 8.104(a). Judge Claustro went on to enter further orders in the case on September 3, 2024; November 20 and 22, 2024; December 6, 2024; and October 7, 2025.

B. Judge Claustro's Federal Crime

On December 6, 2024, the United States filed a plea agreement with Dr. Kevin Tien Do in *United States v. Do*, No. 8:24-cr-00137 (C.D. Cal.), Doc. 6 ("Do Plea Agreement"). It describes a conspiracy, "[b]eginning on or about October 2018, and ending on or about February 2023," to defraud California's Subsequent Injuries Benefits Trust Fund ("SIBTF") through a medical corporation, Liberty Medical Group, Inc. ("Liberty"). (Do Plea Agreement 7.) It identifies an unnamed "Co-Conspirator#1" who "was the de facto owner of Liberty and completely controlled Liberty, including signing the checks from Liberty to defendant," and who "also hired other physicians and employees of Liberty." (*Id.* at 20.) It states that "[a]t the time Co-conspirator#1 was operating this fraudulent scheme with defendant, Co-conspirator#1 was employed as a prosecutor in the Orange County District Attorney's Office, until Co-conspirator#1 was seated as an Orange County Superior Court Judge" (*id.* at 15), and that "[f]rom around December 2016 to

around February 2023, the California SIBTF program paid Liberty more than $4.5 million" (*id.* at 14). The information attached to the agreement describes Co-Conspirator#1 as "a licensed California attorney until late 2022, when seated as an Orange County Superior Court Judge." (*Id.* at 32.)

On January 7, 2026, the United States Attorney filed an Information charging Judge Israel Claustro—the judge who had presided over Petitioner's hearing—with one count of mail fraud in violation of 18 U.S.C. § 1341. *United States v. Claustro*, No. 8:26-cr-00001 (C.D. Cal.), Doc. 1 ("Information"). The Information alleges that Claustro "owned, operated, and controlled Liberty, a medical corporation, including hiring other doctors and employees of Liberty and signing checks from Liberty to other doctors and employees"; that he employed Dr. Do to prepare SIBTF reports after Do had been suspended from California's workers' compensation system, concealing Do's involvement by listing other doctors' names on the reports; and that the charged scheme began "no later than in or around March 2022, and continu[ed] through at least in or around September 2022." (Information ¶¶ 5–7.) Claustro's plea agreement, filed the same day, had been executed by him on December 8, 2025. On January 12, 2026, he pleaded guilty and resigned from the bench. (App. 12.) On August 27, 2026, he was sentenced to one year of probation and a $5,000 fine. (*Claustro*, Doc. 37.)

Claustro was seated as a judge of the Orange County Superior Court in late 2022, by gubernatorial appointment to a seat to which he had already been elected; his elected term began in January 2023. (Do Plea Agreement 32; App. 12; Office of Governor Gavin Newsom, *Governor Newsom Announces Judicial Appointments 11.7.22* (Nov. 7, 2022).) The conspiracy described in the Do plea agreement thus continued for several months after he took the bench.

The Commission on Judicial Performance's decision imposing a public censure and bar, issued March 24, 2026 on a stipulation approved March 18, 2026, characterizes the offense as having been committed "before he was a judicial officer." (App. 12.) The record contains judicially noticeable material bearing on that characterization. The complaint in *Phan v. Liberty Medical Group, Inc.*, No. 30-2024-01433743 (Cal. Super. Ct. Orange Cnty., filed Oct. 21, 2024),

attaches an email exchange dated November 11, 2023—roughly a year after Claustro took the bench, and eight months before Petitioner's hearing—in which Dr. Nhung Phan, a psychologist seeking payment of approximately $100,000 for medical-legal reports prepared for Liberty, wrote to Liberty about the unpaid bills, and "Israel Claustro," writing from the address valleyhealthmgm@gmail.com, replied on Liberty's behalf the same day concerning the SIBTF payment records. (App. 19–20.) Petitioner does not ask this Court to find, as an adjudicated fact, that Claustro was operating Liberty while he sat as a judge. He asks this Court to recognize that this judicially noticeable document raises an objective probability-of-bias question under *Rippo v. Baker*, 580 U.S. 285, 287 (2017) (per curiam)—one that, like the actual-bias claim this Court allowed a habeas petitioner to develop through discovery in *Bracy v. Gramley*, 520 U.S. 899, 908–910 (1997), warrants some mechanism for development rather than immediate foreclosure.

C. Public Disclosure, and Petitioner's Pursuit of Relief

The public record of Claustro's conduct developed in stages, and Petitioner sets them out in full. The Do plea agreement filed on December 6, 2024 described Co-Conspirator#1 without naming him. That same day, Judge Claustro presided in Petitioner's case and entered a child-custody order. On December 16, 2024, the United States Attorney's Office announced Dr. Do's agreement to plead guilty, describing a co-conspirator who "later became an Orange County Superior Court judge during the conspiracy"; and on December 24, 2024, the Los Angeles Times reported that public records suggested Judge Claustro was the co-conspirator described in those filings, to which his counsel responded that it was "premature to comment." Claustro had not been charged. He made no public admission, disclosed nothing on the record in Petitioner's case, and continued to preside over it throughout 2025, including at the October 7, 2025 hearing at which he entered a first amended restraining order. The Information naming him was filed on January 7, 2026; he pleaded guilty and resigned on January 12, 2026.

Petitioner first learned of Claustro's criminal conduct in January 2026, from the public reports of the Information, plea, and resignation; he had not seen the December 2024 reporting. By then representing himself, Petitioner acted at once. Within two weeks of the Information, he

filed six notices of appeal in the Superior Court, one for each principal order entered by Judge Claustro—five on January 20, 2026, and the sixth, addressed to the October 7, 2025 order, on January 21, 2026. All six were docketed as Court of Appeal Case No. G066480.

On March 11, 2026, the Court of Appeal invited letter briefs on timeliness. Petitioner filed a response on April 10, 2026 and a supplemental letter brief on April 13, 2026. (See Part D, *infra*.) On April 16, 2026, the court, on its own motion, dismissed five of the six appeals as untimely. App. 2–5. It reasoned that "[u]nder California law, if an appeal is untimely, the appellate court has no jurisdiction to consider its merits and the appeal must be dismissed" (App. 3), and that "[a]ppellant may not create appellate jurisdiction for untimely appeals by asserting the challenged orders are void" (App. 4). It expressly disclaimed any view on the merits: "By explaining this point of procedure, this court does not intend to suggest any view as to the merit or lack of merit of any motion to deem void prior orders in this case. Instead, our intention is solely to make clear that the issue of alleged voidness is not properly before us." (App. 4–5.) The dismissal was "without prejudice to appellant filing a motion in the trial court to attack prior orders on the grounds raised here (see, e.g., Code Civ. Proc., § 473, subd. (d)), then appealing the ensuing order by the trial court if the motion is denied." (App. 4.)

On May 1, 2026, Petitioner filed a petition for rehearing, a motion for constructive filing of notice of appeal, and a request for judicial notice. The court denied all three on May 4, 2026, without stated reasons. App. 9. Petitioner then petitioned the Supreme Court of California for review of the April 16, 2026 order, with an accompanying motion for judicial notice. That court denied the petition and the motion without opinion on July 8, 2026. App. 7.

The sixth appeal, from the October 7, 2025 order, proceeded separately. On May 19, 2026, the Court of Appeal invited briefing on whether that order was appealable; Petitioner responded on June 18, 2026 with a letter brief and a further request for judicial notice; and on June 25, 2026, the court dismissed the remaining appeal as taken from a nonappealable stipulated order and denied the request for judicial notice. Petitioner did not seek review of that order and does not seek review of it here.

D. How and When the Federal Questions Were Raised Below, and How They Were Passed On

The court of first instance. The federal questions presented were not raised in the Superior Court and could not have been. Their factual predicate—former Judge Claustro's federal crime and his concealment of it from the litigants before him—was not a matter of record when the July 25, 2024 order was entered; the first court records to charge him, and to establish his conduct by his own admission, came with the Information and guilty plea of January 2026. Petitioner does not contend that he preserved a claim he had no means to discover; that impossibility is the substance of the question presented, not a gap in it.

First presentation. Within two weeks of the Information, Petitioner filed the six notices of appeal described above, which the Court of Appeal docketed together as No. G066480.

The Court of Appeal. In response to the court's March 11, 2026 order inviting letter briefs on timeliness, Petitioner filed his Response to Order to Show Cause Regarding Timeliness of Notice of Appeal on April 10, 2026, and his Supplemental Letter Brief on April 13, 2026. The supplemental brief presented the federal authority: that the Due Process Clause guarantees an objectively impartial tribunal and a means of developing a probability-of-bias claim (*Rippo v. Baker*, Supp. Br. 2, 10; *Bracy v. Gramley*, Supp. Br. 2, 3, 6, 7, 10; *Caperton v. A.T. Massey Coal Co.*, Supp. Br. 3; *Williams v. Pennsylvania*, Supp. Br. 2; *Withrow v. Larkin*, Supp. Br. 2); that fraud upon the court justifies relief beyond ordinary time limits (Supp. Br. 4–6, 10); and that the court should treat the appeals as a petition for an extraordinary writ (Supp. Br. 4, 10). The court's April 16, 2026 order described Petitioner's contentions as being that the court "should void all prior orders of former Judge Israel Claustro" and that "considerations of due process should trump appellate deadlines, and lead this court to review the challenged orders by converting these appeals into a writ petition"; observed that "[t]hese arguments are made in the first instance in this court"; held that "[a]ppellant may not create appellate jurisdiction for untimely appeals by asserting the challenged orders are void"; and stated that "the issue of alleged voidness is not properly before us." (App. 4–5.)

Rehearing. On May 1, 2026, Petitioner filed a petition for rehearing, a motion for constructive filing of notice of appeal, and a request for judicial notice of the Claustro plea agreement, the Do plea agreement, and the Commission on Judicial Performance's decision, stating expressly that those materials "support[] the preservation of a federal due-process bias question under *Caperton v. A.T. Massey Coal Co.* (2009) 556 U.S. 868, *Williams v. Pennsylvania* (2016) 579 U.S. 1, and *Rippo v. Baker* (2017) 580 U.S. 285." (Request for Judicial Notice, May 1, 2026, at 3.) On May 4, 2026, the court denied all three filings in three sentences, without stated reasons. (App. 9.)

The Supreme Court of California. Petitioner's petition for review, filed May 26, 2026, presented the same federal question, in terms that match the question presented here: "This case presents the distinct procedural question *Rippo* did not answer: what mechanism must a state provide when the facts supporting such a claim become discoverable only after the ordinary appellate deadline has expired?" (Petition for Review, May 26, 2026, at 8, 19.) It was accompanied by a motion for judicial notice of the same materials. The court denied the petition and the motion without opinion on July 8, 2026. (App. 7.)

Summary. The federal questions were raised at the first moment their factual predicate existed, by every procedural means available in the California appellate courts, and were presented to each court that could have reached them. The Court of Appeal decided only that an untimely appeal cannot be rescued by asserting that the orders appealed from are void, and expressly disclaimed any view on the voidness question itself; it refused, without explanation, to receive the judicially noticeable materials on which the federal claim rests. The Supreme Court of California denied review without opinion. The merits of the disqualification claim have thus been decided nowhere below; the only federal ruling below is the Court of Appeal's rejection of the contention that due process required it to reach that claim despite the lapse of the appeal period.

REASONS FOR GRANTING THE WRIT

Petitioner does not contend that existing precedent compels a particular answer to the question presented. It does not. No court—not the Court of Appeal, not the Supreme Court of California, and, so far as Petitioner has found, no other court in the country—has decided what procedural mechanism, if any, due process requires when a litigant's ground for challenging a judicial officer's impartiality could not have been discovered until after the ordinary appellate deadline expired, because the ground was concealed by the officer whose impartiality is at issue. That gap, not a conflict this Court can resolve by choosing among competing answers, is why review is warranted.

I. The question is one of first impression that will recur, and it is unlikely to be resolved without this Court's intervention.

Former Judge Claustro sat on the Orange County Superior Court from late 2022 until his resignation on January 12, 2026, presiding over family-law matters—custody, support, and restraining orders—for a substantial part of that period. Every litigant whose orders bear his signature faces the dilemma Petitioner faces: an appellate deadline that expired, in most instances, long before his guilty plea became public in January 2026.

The Court of Appeal's disposition—dismiss the appeal, direct the litigant to a freestanding trial-court motion under Code of Civil Procedure section 473, subdivision (d), and permit an appeal only from the denial of that motion—will govern how that class of claims is handled. But because that disposition expressly declined to reach the merits, and because a trial-court motion generates no appellate decision unless and until it is denied and a fresh appeal is taken, the question of what due process requires will not reach an appellate court again unless a member of that same class separately litigates it to a second denial, on a second clock, with no assurance of a different result. This Court's review now, while the question is squarely presented and undecided, avoids years of piecemeal and inconsistent trial-court rulings on the same recurring dilemma.

II. The decision below leaves an unresolved tension between two lines of this Court's due process precedent, and the mechanism California has offered does not obviously resolve it.

A. The objective-bias line. This Court has long held that due process sometimes demands recusal even when a judge "'ha[s] no actual bias,'" because the question is whether, "objectively speaking, the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Rippo v. Baker*, 580 U.S. 285, 287 (2017) (per curiam) (alteration in original; internal quotation marks omitted); *see also Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 881, 884 (2009); *Williams v. Pennsylvania*, 579 U.S. 1, 8 (2016) (the inquiry is "not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, 'the average judge in his position is "likely" to be neutral, or whether there is an unconstitutional "potential for bias"'" (quoting *Caperton*, 556 U.S. at 881)); *Withrow v. Larkin*, 421 U.S. 35, 47 (1975).

A related but doctrinally distinct case illustrates why an opportunity to develop the facts matters before a bias claim is rejected. In *Bracy v. Gramley*, 520 U.S. 899 (1997), a habeas petitioner alleged actual, subjective bias—that the trial judge, later convicted of taking bribes to fix other cases, had a motive to compensate by ruling harshly against defendants, like the petitioner, who had not bribed him. *Id.* at 905; *see Rippo*, 580 U.S. at 287 (distinguishing *Bracy* on this ground). This Court recognized that "if it could be proved, such compensatory, camouflaging bias on Maloney's part in petitioner's own case would violate the Due Process Clause of the Fourteenth Amendment," *Bracy*, 520 U.S. at 905, held that the petitioner had shown "good cause" for factual discovery under Habeas Corpus Rule 6(a), and remanded for the district court to permit it—before any discovery had occurred and before the theory itself had been tested, *id.* at 908–910. *Bracy* is not itself a due process holding; it construes a federal procedural rule. But it reflects a principle this Court has recognized in the due process context as well: a litigant alleging that a judge's own undisclosed conduct compromised his impartiality cannot fairly be required to prove that claim before he has any means of developing facts that, by their nature, are in the judge's possession rather than his own.

The sequel to *Bracy* illustrates why the opportunity matters. The theory this Court allowed the *Bracy* petitioner to pursue was one the court of appeals had thought "quite speculative." *Id.* at 905. Yet once discovery was permitted, the district court found it "more likely than not that Maloney engaged in compensatory bias in the death penalty phase" of the petitioner's trial and vacated the death sentences, and the en banc Seventh Circuit affirmed. *Bracy v. Schomig*, 286 F.3d 406, 412, 419 (7th Cir. 2002) (en banc). A claim that looked speculative on the pleadings proved, in the end, to be a meritorious due process claim—but only because a procedural mechanism existed through which it could be developed. The disposition below forecloses that possibility on direct appeal and leaves it to a trial-court motion whose availability for a claim of this kind is, as shown above, unsettled.

Petitioner is aware, and states candidly, that *Rippo*, *Caperton*, *Williams*, and *Bracy* each involved a nexus between the judge's compromising conduct and the specific proceeding or class of proceedings under review—a contemporaneous bribery investigation overlapping the trial in *Rippo*; a $3 million campaign expenditure by a party's principal in *Caperton*; the judge's own prior personal involvement, as the prosecutor who approved seeking the death penalty, in the very case before him years later in *Williams*, 579 U.S. at 8; and a specific motive to treat non-bribing defendants harshly, alleged and later proved in part in *Bracy*. Of these, *Williams* presents the most distant nexus to this case: former Judge Claustro's concealed criminal conduct arose from a separate scheme with no connection to Petitioner's family-court proceeding, not from any prior role in this litigation. Petitioner cites *Williams* for its restatement of the objective standard, not as a factual analog. Petitioner does not ask this Court to hold, as a matter of law, that former Judge Claustro's felony—which the Commission on Judicial Performance has characterized as committed "before he was a judicial officer," a characterization Petitioner disputes on the basis of the judicially noticeable materials described in the Statement of the Case—necessarily biased him against Petitioner specifically. Petitioner asks this Court to recognize, as a matter of due process rather than habeas procedure, the principle *Bracy* applied under Rule 6(a): a litigant may not be required to prove the ultimate question of bias before being afforded any mechanism to

investigate and present it. The decision below denies even that on direct review. It treats the question as not presentable on appeal once the time to appeal—60 days, or at the outside 180—has passed, regardless of when the underlying facts became knowable, and relegates it to a trial-court motion that no California court has yet said is available for a claim of this kind—a harsher rule than the one federal habeas courts apply to state prisoners under *Bracy* itself.

B. The meaningful-access line. A separate but related strand of this Court's due process precedent holds that a State may not extinguish a claim or right through the operation of a procedural rule without affording a meaningful opportunity to be heard. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433–434 (1982) (State could not terminate a claimant's cause of action because a state agency, for reasons beyond the claimant's control, failed to convene a timely hearing); *Boddie v. Connecticut*, 401 U.S. 371, 376–377, 380–381 (1971) (due process requires meaningful access to the courts where they provide the only forum for resolving a dispute of fundamental importance). Petitioner recognizes that both cases arose in different postures—an administrative claim in *Logan*, a court-access fee in *Boddie*—and does not contend that either controls this one. They stand, at a minimum, for the proposition that the existence of a nominal procedure is not itself sufficient; due process asks whether the procedure actually affords a fair opportunity to be heard on the claim in question. That is the precise question the Court of Appeal's disposition leaves open here, and it is a fair one. California has itself recognized, in an analogous context, that a judge's own undisclosed disqualifying financial interest can be reached through a writ of error coram vobis. *See Chaganti v. Superior Court*, 73 Cal.App.5th 237, 247–249 (2021) (judge's ownership of stock in the parent corporation of a party required disqualification, and the judge had a duty to disclose it); *see also Cadenasso v. Bank of Italy*, 214 Cal. 562, 568 (1932). In granting relief, the *Chaganti* court held that "it would be improper to place the burden on a party to be constantly on alert for new evidence of a judge's disqualification," and that the litigant had raised the issue at the earliest practicable opportunity after discovering it. 73 Cal.App.5th at 248. Petitioner states plainly that the litigant in *Chaganti* raised the issue before his judgment became final—a posture Petitioner's own case has already

passed, given the Court of Appeal's dismissal and the Supreme Court of California's denial of review. Petitioner does not overstate *Chaganti* to hold that finality itself is no obstacle to a claim of this kind; the timing distinction is real, and is part of why this case, unlike *Chaganti*, requires a federal answer rather than a further state trial-court motion alone. What *Chaganti* does establish is the narrower principle that a litigant confronting a judge's own undisclosed disqualifying interest is not charged with a duty of continuing vigilance to have found it sooner—directly relevant to Petitioner's own diligence, which he exercised within two weeks of the Information and plea that first placed Claustro's conduct in the judicial record. The unresolved federal question is whether due process requires that *some* avenue—one that reaches an appellate court on the disqualification question itself, rather than only a trial-court motion whose availability for this kind of claim is unsettled and whose denial would start yet another appellate clock—exists for a litigant who, like the *Chaganti* litigant, acted diligently once the concealment surfaced, but whose case, unlike *Chaganti*'s, had already become final by then.

C. The jurisdictional-deadline line, and why it does not resolve this case. Petitioner is aware of *Bowles v. Russell*, 551 U.S. 205 (2007), which held that courts lack authority to create equitable exceptions to a statutory appellate filing deadline—even, on facts more sympathetic than these, where the district court's own order had told the appellant he had more time than the statute allowed. *Id.* at 207, 214–215. *Bowles* forecloses any argument that this Court should simply excuse Petitioner's untimely notices of appeal as a matter of equity, and Petitioner does not make that argument. But *Bowles* addressed a claim the appellant could have brought on time; his complaint was that he relied on an erroneous deadline for a claim whose existence and factual basis he already knew. Petitioner's claim did not exist, in any form he could plead on facts of record, until Claustro's conduct was exposed—first by press inference in December 2024, then by charge and admission in January 2026—and Petitioner acted within two weeks of the latter. *Bowles* did not present, and its holding does not resolve, whether a filing period of this kind runs from the triggering order regardless of when the claim accrues, or whether a claim whose factual

predicate is concealed by the very official whose conduct is at issue accrues only upon discovery. That accrual question, not an equitable exception to a known deadline, is what this case presents.

Congress itself has drawn exactly this distinction in an analogous limitations context. The one-year limitations period for federal habeas relief does not run, in relevant part, from the date of the state judgment; it runs from "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." 28 U.S.C. § 2244(d)(1)(D). That provision reflects a judgment that a fixed triggering event is the wrong accrual rule for a claim whose factual basis is not yet knowable, and that discoverability, not the date of the underlying order, should start the clock. Petitioner does not contend that section 2244(d)(1)(D) applies of its own force here; he asks only that its logic inform whether *Bowles*'s bar on equitable exceptions to a *known* deadline was ever meant to reach a claim that could not yet be known at all.

Petitioner has disclosed, in the Statement of the Case, that press accounts in December 2024 connected Judge Claustro to the Do plea agreement a year before he was charged. He anticipates that Respondent will rely on them, and addresses the point now. The question under any discovery-based accrual rule is when the factual predicate of the *claim* could have been discovered—not when a newspaper first inferred, from public records, that a sitting judge might be the unnamed co-conspirator in another person's plea agreement. Petitioner does not contend that a conviction is a prerequisite to a judicial-bias claim; the litigant in *Rippo* moved to disqualify the judge during the investigation, before any charge was brought. 580 U.S. at 285–286. The point is narrower. A press inference, from another defendant's plea agreement, that an uncharged judge who remained on the bench and said nothing might be the unnamed co-conspirator supplied no admitted or adjudicated fact, only a reporter's inference about a judge who had been accused of nothing. The Do plea agreement of December 2024 was itself a court record, but one that named no one; the Information and plea of January 2026 were the first court records to charge former Judge Claustro and the first to establish, by his own admission, that the conduct occurred. Petitioner acted within two weeks of them. Whether the earlier reporting

would have supported a disqualification motion bears on diligence, and is a question no court below reached. California's own courts, moreover, have held it "improper to place the burden on a party to be constantly on alert for new evidence of a judge's disqualification." *Chaganti*, 73 Cal.App.5th at 248. Nor does the December 2024 reporting help the court below: a judge who read of his own exposure in the newspaper and said nothing to the litigants before him for the next year only sharpens the question of what process is due to those litigants once he is gone.

D. A note on the state of authority elsewhere. Petitioner has found no case, in California or any other jurisdiction, holding that a judicial-disqualification claim discovered after an appellate deadline revives that deadline. Petitioner states this plainly, because the absence of authority either way—not a conflict of authority—is itself part of why the question warrants this Court's attention.

What authority does exist on the closely related question—how a disqualified judge's rulings should be treated, and when the objection may be raised—is itself divided, in a way that illustrates rather than resolves how unsettled this area of law is. In a case in which the disqualifying relationship was not discovered until after the trial court had ruled and a writ of error was already pending, the Michigan Supreme Court held that "[j]udgments and orders made by a disqualified judge are not voidable merely, but are void," that "[t]hey may be collaterally attacked," and that "the objection, if not taken before decision is rendered, is available in the appellate court." *Bliss v. Caille Brothers Co.*, 149 Mich. 601, 606, 113 N.W. 317 (1907). California's Supreme Court reached the same conclusion as a matter of its own law: a judge disqualified by an interest in the litigation "has no jurisdiction to render a judgment in such an action"—void, not merely voidable. *Cadenasso v. Bank of Italy*, 214 Cal. 562, 568 (1932).

The federal system supplies a point of comparison. Where a federal judge's disqualifying interest is discovered only after judgment, relief from the judgment may be granted under Federal Rule of Civil Procedure 60(b)(6); this Court affirmed the vacatur of a judgment on that basis in *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 863–864, 870 (1988), while observing that the disqualification statute "does not, on its own, authorize the reopening of

closed litigation," *id.* at 863. That remedy is a creature of the federal rules and says nothing about what due process requires of a State. But it confirms that disqualification discovered after judgment is a recognized problem to which legal systems have given deliberate answers—and that California's appellate courts have not yet said whether, or on what terms, their own collateral procedure reaches it.

Petitioner does not present that as the last word. A line of more recent Court of Appeal decisions has moved toward treating a disqualified judge's rulings as merely voidable—reasoning the Court of Appeal has extended to arbitrators by analogy to judicial-disqualification cases generally, without drawing any fact-based distinction that would exempt an interest-based disqualification like *Cadenasso*'s from the same treatment. *See Betz v. Pankow*, 16 Cal.App.4th 931, 939–940 (1993); *Urias v. Harris Farms, Inc.*, 234 Cal.App.3d 415, 424 (1991). As recently as 2023, the Court of Appeal framed this expressly as an unresolved split and sided with the voidable line—without citing or distinguishing *Cadenasso*, the Supreme Court decision that originated the rule on the other side of that split. *See Conservatorship of Tedesco*, 91 Cal.App.5th 285, 305–307 (2023). Under *Auto Equity Sales, Inc. v. Superior Court*, 57 Cal.2d 450, 455 (1962), no Court of Appeal decision can overrule a decision of the Supreme Court of California, and none has purported to; but neither has this tension been presented to, or resolved by, the only court with authority to resolve it. Petitioner does not ask this Court to referee that state-law question. He offers it as further, independent confirmation of the point this Part makes as a whole: no settled answer has been given, by this Court or by California's courts, to how the law should treat a judge's concealed disqualifying conduct once it surfaces too late for the ordinary process to address it.

A different rule governs a separate procedural mechanism, and it is worth separating from the split just described. Code of Civil Procedure section 170.3, which allows a party to seek a judge's disqualification while a case is still pending, provides that where the grounds for disqualification arise or are learned of only after the judge has already made rulings, "in the absence of good cause the rulings he or she has made up to that time shall not be set aside by the

judge who replaces the disqualified judge." Code Civ. Proc., § 170.3, subd. (b)(4); *see Urias*, 234 Cal.App.3d at 422–423. That provision constrains what a *successor* judge may undo while a case remains pending; it does not speak to what a reviewing court may do with those rulings on appeal or collateral attack. It is a different rule for a different posture, not a competing answer to the question *Bliss* and *Cadenasso* address—and *Urias* itself found the subdivision inapplicable where the judge had completed judicial action before the disqualification came to light. 234 Cal.App.3d at 423. And the same subdivision contains its own express exception for "good cause" to set aside even those interim rulings—a presiding judge's concealed federal felony is as strong a candidate for that exception as the provision is likely to see.

Petitioner also acknowledges that both *Bliss* and *Cadenasso* involved the void-judgment objection surfacing while the case was otherwise still properly before a court—a pending writ of error in *Bliss*, and in *Cadenasso* a separate action in equity brought before the judgment in the original action became final—not a deadline being revived after it had run. Neither case holds that a missed deadline may itself be excused; both hold only that the objection to a disqualified judge's judgment survives once the matter is otherwise properly presented, and *Cadenasso* expressly reserved whether relief would lie after the judgment became final. 214 Cal. at 569. That is consistent with, not a substitute for, the accrual argument in Part II.C.

III. This is an appropriate vehicle for the question presented.

The judgment below is final as to Petitioner: the restraining order remains in effect, the custody orders stand, and no further direct appellate proceeding concerning the 2024 orders is pending. The absence of a merits ruling below is not an obstacle to review—it is the subject of the question presented. Petitioner does not ask this Court to review the restraining order on its merits, or to hold that former Judge Claustro was in fact biased. He asks this Court to decide the narrower, antecedent, and undecided procedural question described above, on a record that squarely presents it: an admitted felony by the presiding judge, judicially noticeable evidence bearing on its timing relative to his judicial tenure, and a state appellate disposition that dismissed the claim as untimely, pointed to a trial-court motion without expressing any view on

whether it is available for a claim of this kind, and otherwise declined to reach it. Few cases will present this combination of facts as cleanly; fewer still are likely to reach this Court while the underlying question remains as undecided as it is today.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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