

1 TODD BLANCHE  
2 Deputy Attorney General  
3 BILAL A. ESSAYLI  
4 First Assistant United States Attorney  
5 ALEXANDER B. SCHWAB  
6 Assistant United States Attorney  
7 Acting Chief, Criminal Division  
8 IAN V. YANNIELLO (Cal. Bar No. 265481)  
9 GREGORY W. STAPLES (Cal. Bar No. 155505)  
10 DANIEL H. WEINER (Cal. Bar No. 329025)  
11 Assistant United States Attorneys  
12 1400/1500 United States Courthouse  
13 312 North Spring Street  
14 Los Angeles, California 90012  
15 Telephone: (213) 894-3667/3535/0813  
16 Facsimile: (213) 894-0142  
17 E-mail: ian.yanniello@usdoj.gov  
18 greg.staples@usdoj.gov  
19 daniel.weiner@usdoj.gov

20 Attorneys for Plaintiff  
21 UNITED STATES OF AMERICA

22 UNITED STATES DISTRICT COURT

23 FOR THE CENTRAL DISTRICT OF CALIFORNIA

24 UNITED STATES OF AMERICA,  
25 Plaintiff,  
v.  
26 DURK BANKS, et al.,  
27 Defendants.

28 No. CR 24-621 (B) -MWF

GOVERNMENT'S OPPOSITION TO JOINT  
MOTION TO DISQUALIFY AND DISMISS  
INDICTMENT; EXHIBITS A-D

28 Plaintiff United States of America, by and through its counsel  
of record, Assistant United States Attorneys Ian V. Yanniello,  
Gregory W. Staples, and Daniel H. Weiner, hereby files its Opposition  
to Defendants' Joint Motion to Disqualify the United States  
Attorney's Office for the Central District of California and Dismiss  
the Second Superseding Indictment with Prejudice (Dkt. 290). The  
Court has already denied defendants' request to recuse itself and the  
other judges in the Central District of California. Accordingly,

1 this Opposition will address only defendants' remaining claims for  
2 relief.

3 This Opposition is based upon the attached memorandum of points  
4 and authorities, the attached Exhibits A-D, the files and records in  
5 this case, and such further evidence and argument as the Court may  
6 permit.

7 Dated: December 8, 2025

Respectfully submitted,

8 TODD BLANCHE  
Deputy Attorney General

9 BILAL A. ESSAYLI  
10 First Assistant United States  
11 Attorney

12 ALEXANDER B. SCHWAB  
13 Assistant United States Attorney  
14 Acting Chief, Criminal Division

15 /s/  
16 IAN V. YANNIELLO  
17 GREGORY W. STAPLES  
18 DANIEL H. WEINER  
19 Assistant United States Attorneys

20 Attorneys for Plaintiff  
21 UNITED STATES OF AMERICA

22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

<u>DESCRIPTION</u>	<u>PAGE</u>
TABLE OF AUTHORITIES.....	iii
MEMORANDUM OF POINTS AND AUTHORITIES.....	1
I. INTRODUCTION.....	1
II. STATEMENT OF FACTS.....	1
A. Significant and Credible Evidence Established that Defendant Banks is Both a Flight Risk and Ongoing Danger.....	1
B. Judge Donahue Ordered Defendant Banks Detained Pending His Murder Trial (December 2024).....	2
C. An Anonymous Caller Left Threatening Messages for Judge Donahue Months After the Detention Hearing (February 2025).....	2
D. The USMS Notified this Court and the USAO About the Messages to the Magistrate Judge.....	2
E. Defendant Banks Sought to Reopen His Detention Proceedings Based on Purported "New Evidence" (April 2025).....	4
F. An Anonymous Caller Threatened an AUSA Shortly After the Government Filed an Opposition to Defendant Banks' Motion to Dismiss.....	4
G. The Magistrate Judge Again Ordered Defendant Banks Detained (May 2025).....	5
H. This Court Reviewed the Detention Issue "De Novo" and Ordered Defendant Banks Detained Based on Flight Risk and Continued Danger.....	6
I. The Government Filed a Motion to Empanel an Anonymous Jury to Protect Jurors and Preserve Trial Integrity.....	6
J. Defendants File Their Motion to Recuse All Judges in the District and to Recuse the Entire USAO.....	7
K. This Court Has Already Denied Defendants' Request to Recuse and Stay Proceedings, Finding There Is "No Basis" for Any Judge in this District to Recuse.....	8
III. ARGUMENT.....	8
A. Recusal of Any Prosecutor in the Central District is Wholly Unwarranted.....	8

1 **TABLE OF CONTENTS (CONTINUED)**

2	<u>DESCRIPTION</u>	<u>PAGE</u>
3	1. Legal Standard.....	8
4	2. Defendants' Motion is Misleading and Meritless.....	10
5	B. There is No Basis to Dismiss the Indictment, Let Alone Grant Any Relief to Defendants.....	14
6	C. An Evidentiary Hearing is Unnecessary and Unwarranted....	15
7	IV. CONCLUSION.....	15

1 **TABLE OF AUTHORITIES**

	<u>DESCRIPTION</u>	<u>PAGE</u>
2		
3	<u>CASES:</u>	
4	<u>Resnover v. Pearson,</u> 754 F. Supp. 1374 (N.D. Ind. 1991) .....	10
5		
6	<u>Young v. U.S. ex rel. Vuitton et Fils S.A.,</u> 481 U.S. 787 (1987) .....	1, 9, 13
7		
8	<u>United States v. Black,</u> 733 F.3d 294 (9th Cir. 2013) .....	14
9		
10	<u>United States v. Bundy,</u> 968 F.3d 1019 (9th Cir. 2020) .....	14
11		
12	<u>United States v. Green,</u> 962 F.2d 938 (9th Cir. 1992) .....	14
13		
14	<u>United States v. Heldt,</u> 668 F.2d 1238 (D.C. Cir. 1981) .....	9
15		
16	<u>United States v. Holland,</u> 519 F.3d 909 (9th Cir. 2008) .....	9
17		
18	<u>United States v. Irwin,</u> 612 F.2d 1182 (9th Cir. 1980) .....	15
19		
20	<u>United States v. Kojayan,</u> 8 F.3d 1315 (9th Cir. 1993) .....	13
21		
22	<u>United States v. Lorenzo,</u> 995 F.2d 1448 (9th Cir. 1993) .....	9
23		
24	<u>United States v. Rogers,</u> 751 F.2d 1074 (9th Cir. 1985) .....	14
25		
26	<u>United States v. Sibla,</u> 624 F.2d 864 (9th Cir. 1980) .....	12
27		
28	<u>United States v. Williams,</u> 68 F.4th 564 (9th Cir. 2023) .....	passim
	<u>STATUTES:</u>	
	18 U.S.C. § 3142(f)(2) .....	4
	18 U.S.C. §§ 2261A(2)(A) .....	4

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendants' sweeping request to recuse any prosecutor --- much  
4 less all prosecutors --- in the Central District of California and  
5 dismiss the indictment in this murder case should be flatly rejected.  
6 The motion is based on factual misrepresentations, baseless inuendo,  
7 and cites no caselaw supporting the demanded relief. Defendants fail  
8 to show any misconduct, let alone prejudice, resulting from the  
9 government's decision of how and when to disclose the third-party  
10 threats at issue. Indeed, this Court has already denied defendants'  
11 request to recuse the Court and every other judge in the district,  
12 finding that there was simply no basis to recuse any jurist based on  
13 the threats. And given the well-established law that recusal of  
14 a prosecutor requires a more stringent showing, see Young v. U.S. ex  
15 rel. Vuitton et Fils S.A., 481 U.S. 787, 810-11 (1987), there is  
16 likewise no basis whatsoever to recuse any Central District  
17 prosecutor from this case. Defendants' motion should be denied  
18 without an evidentiary hearing.

19 **II. STATEMENT OF FACTS**

20 **A. Significant and Credible Evidence Established that**  
21 **Defendant Banks is Both a Flight Risk and Ongoing Danger**

22 As previously briefed before this Court, the government  
23 submitted significant evidence showing defendant Banks' continued  
24 danger and flight risk if released on bond pending trial. (See Dkt.  
25 167.) In addition to the allegations in the indictment charging  
26 defendant Banks with leading a group of individuals who murdered S.R.  
27 with a machinegun and other weapons, the government submitted  
28 evidence that defendant Banks allegedly placed additional monetary

1 bounties to solicit murders, and that defendant Banks attempted to  
2 flee the country after his co-conspirators were arrested. (See Dkts.  
3 1 [Complaint]; 105 at 1-2, 5-6.)

4 **B. Judge Donahue Ordered Defendant Banks Detained Pending His  
5 Murder Trial (December 2024)**

6 On December 12, 2024, United States Magistrate Judge Donahue  
7 ordered that defendant Banks be detained pending trial based on  
8 flight risk and continuing danger to the community. (Dkt. 116.) The  
9 court reasoned that no conditions of release would reasonably assure  
10 the safety of the community, finding that defendant Banks "uses his  
11 money, influence and power to endanger individuals whom he perceives  
12 as a threat." (Dkt. 116 at 4.) The court also found that defendant  
13 Banks was a flight risk based on his attempt to flee the country  
14 immediately after learning of his co-conspirators' arrests. (Id.)

15 **C. An Anonymous Caller Left Threatening Messages for Judge  
16 Donahue Months After the Detention Hearing (February 2025)**

17 On February 22, 2025, an anonymous caller left four voicemails  
18 on the magistrate judge's chamber's phone line. (Mot. at Ex. 2.)  
19 Among other things, the caller stated that defendants Banks and  
20 Deandre Wilson were innocent, and that "if they get life . . . I'm  
21 gonna burn this motherfucker down . . . burn it to the ground . . .  
22 it's not a game." (Mot. at Ex. 3.)

23 **D. The USMS Notified this Court and the USAO About the  
24 Messages to the Magistrate Judge**

25 On February 25, 2025, a United States Deputy Marshal contacted  
26 this Court's chambers, notifying the Court of the threats to the  
27 magistrate judge. (Ex. A at USAO\_37466.) An AUSA assigned to this  
28 case was also copied on the email, which was the first time the

1 United States Attorney's Office ("USAO") learned about the  
2 voicemails. (Id.)

3 After learning of the messages that morning, the USAO forwarded  
4 the threats to the FBI --- a communication that did not include any  
5 court staff --- to see whether the United States Marshals Service  
6 ("USMS") had any information about the caller. And later that  
7 afternoon, an AUSA assigned to this case responded to the Deputy  
8 Marshal's email (i.e., Ex. A), stating: "Deputy [Marshal], Thank you  
9 for bringing this to our attention, too. We have asked our FBI team  
10 to reach out to you." (Ex. B at USAO\_37469.) Undersigned counsel is  
11 aware of no other communication from the USAO or FBI to any member or  
12 employee of the judiciary regarding the threats to the magistrate  
13 judge.

14 On March 6, 2025, the Deputy Marshal responded to his initial  
15 email notifying chambers about the voice messages and provided an  
16 update that investigators identified the anonymous caller, and  
17 "checked to see if he had any contact with the defendants in the  
18 Banks trial, which turned up negative results." (Ex. A at  
19 USAO\_37466.) An AUSA assigned to the case was copied on the Deputy  
20 Marshal's March 6, 2025 email. (Id.)<sup>1</sup> To date, investigators have  
21 not found evidence linking any defendants in this case to the threats  
22 received by the magistrate judge.

23

24

---

25 <sup>1</sup> Notably, defendants' claim that the government engaged in  
26 purported "ex parte communications" with the Court appears to be  
27 based entirely on the email correspondence contained in government's  
28 Exhibits A and B. As a result and for transparency, the government  
has publicly filed redacted versions of the emails. The government  
has redacted certain sensitive information from the exhibits,  
including the names of court personnel. No substantive information  
has been redacted.

1                   **E. Defendant Banks Sought to Reopen His Detention Proceedings**  
2                   **Based on Purported "New Evidence" (April 2025)**

3                   On April 18, 2025, defendant Banks filed an application to  
4                   reconsider the magistrate judge's December 2024 detention order.  
5                   (Dkt. 134.) That same day, defendant Banks also filed a motion to  
6                   dismiss the First Superseding Indictment, claiming that certain rap  
7                   lyrics included in the indictment's introductory allegations about  
8                   greenlighting a murder were authored before S.R.'s murder, thus  
9                   alleging that defendant Banks could not have been rapping about  
10                   greenlighting S.R.'s murder. (Dkt. 135.)

11                  In response to defendant Banks' motion to dismiss, the  
12                  government obtained a Second Superseding Indictment ("SSI") that  
13                  removed the disputed introductory allegation on May 1, 2025. (Dkt.  
14                  147.) The SSI also added a charge against all defendants of Stalking  
15                  Resulting in Death, in violation of 18 U.S.C. §§ 2261A(2)(A), (B),  
16                  2261(b)(1). (*Id.* at Count Four.)<sup>2</sup>

17                  **F. An Anonymous Caller Threatened an AUSA Shortly After the**  
18                  **Government Filed an Opposition to Defendant Banks' Motion**  
19                  **to Dismiss**

20                  On April 28, 2025, the government filed its opposition to  
21                  defendant Banks' application to reopen his detention hearing. (Dkt.  
22                  140.) Among other things, the government noted that the application  
23                  was meritless because defendant Banks failed to meet his burden to  
24                  show there was materially new information bearing on his  
25                  dangerousness and flight. (*Id.* at 1; 18 U.S.C. § 3142(f)(2).)

26                  

---

27                  <sup>2</sup> Written internal USAO communications show that as early as  
28                  March 2025 the government planned to file a superseding stalking  
charge. To maintain the government's deliberative privilege, the  
USAO has not attached these communications, but can provide a  
redacted version to the Court at its request.

1 Hours after filing the opposition to defendant Banks'  
2 application to reopen, an AUSA on the case received a phone call from  
3 an unknown male caller who began making threats to the AUSA, which  
4 caused the AUSA to begin recording the call. During the call, the  
5 caller stated "free Durk, or we gonna shoot that motherfucker up."  
6 The AUSA responded "shoot who up," to which the caller said "shit,  
7 your ass."<sup>3</sup> (Mot. at Ex. 5.)

8 The investigation into the threats received by the AUSA was  
9 handled by an AUSA who is not part of this prosecution team.  
10 Undersigned counsel is aware of *no communications* from the USAO or  
11 FBI to any member or employee of the judiciary regarding the threats  
12 to the AUSA. To date, investigators have not found evidence linking  
13 any defendants in this case to the threat received by the AUSA.

14 **G. The Magistrate Judge Again Ordered Defendant Banks Detained  
(May 2025)**

16 Following a May 8, 2025 hearing on defendant Banks' application  
17 to reconsider detention, the magistrate judge denied defendant's  
18 application and maintained the court's previous order. (Dkt. 163.)  
19 The court found that defendant Banks failed to present "changed  
20

---

21 <sup>3</sup> At the request of the defendants, the government exceeded its  
22 discovery obligations and produced to defendants the FBI's  
23 investigative file concerning the threat to the AUSA, which included  
24 a transcript of the video recording made by the AUSA. The recorded  
25 video file, however, was not produced to the defense because (1) it  
26 is irrelevant, (2) it is duplicative of the information already  
27 provided to defendants, and (3) it depicts sensitive information,  
namely, a photograph of the AUSA's minor child, that is captured  
throughout the recording. Although defendants never raised the issue  
with the government prior to filing their motion, defendants' motion  
oddly questions whether the recording exists. (Mot. at 5 & n.2.) To  
the extent the Court determines the video recording is relevant to  
resolving the motion, the government intends to lodge the file in  
camera.

1 circumstances [] that would warrant reconsideration of the [December  
2 2024] Order of Detention based on either dangerousness or on risk of  
3 flight," (Ex. C at 31:6-8), and reaffirmed its December 2024  
4 reasoning that the allegations against defendant Banks "continue to  
5 support the conclusion that Defendant uses his money, influence and  
6 power to endanger individuals whom he perceives as a threat," (Dkt.  
7 163 at 4).

8 **H. This Court Reviewed the Detention Issue "De Novo" and  
9 Ordered Defendant Banks Detained Based on Flight Risk and  
Continued Danger**

10 On May 14, 2025, defendant Banks appealed the May 2025 detention  
11 order to this Court. (Dkt. 159.) The Court heard argument on June  
12 2, 2025, and issued a written opinion on June 9, 2025 detaining  
13 defendant Banks. (Dkt. 202.) Applying de novo review, the Court  
14 detained defendant Banks on danger and risk of flight, finding (just  
15 like the magistrate judge) the evidence before the Court showed that  
16 defendant Banks "uses his money, influence and power to endanger  
17 individuals whom he perceives as a threat." (Id. at 4.)

18 **I. The Government Filed a Motion to Empanel an Anonymous Jury  
19 to Protect Jurors and Preserve Trial Integrity**

20 On October 6, 2025, the government filed a motion seeking the  
21 empanelment of an anonymous jury. (Dkt. 235.) Among other things,  
22 the motion cited the significant media attention this case has  
23 generated, which prompted the anonymous threats to the magistrate  
24 judge and AUSA. Because the government determined the anonymous  
25 threats were relevant to its motion, it produced to defense counsel  
26 ///

27 ///

1 information about the threats prior to filing its motion for an  
2 anonymous jury.<sup>4</sup>

3 **J. Defendants File Their Motion to Recuse All Judges in the  
4 District and to Recuse the Entire USAO**

5 On November 13, 2025, defendants filed their motion and  
6 requested extreme and extraordinary relief: to vacate all hearing and  
7 trial dates; to recuse this Court, recuse all judges and prosecutors  
8 in the Central District of California; and to dismiss the indictment  
9 with prejudice. (Dkt. 290.) The government immediately filed a  
10 statement noting at least two incorrect representations in  
11 defendants' filing. (Dkt. 292.) The first was that the "[t]he  
12 parties request that the Court refer this matter to an out-of-  
13 district judge for hearing as soon as is practicable." (Mot. at ECF  
14 3.). Counsel for defendant Banks has since acknowledged the  
15 reference to "parties" was an "inadvertent drafting error." The  
16 second error --- which has yet to be addressed or corrected by  
17 defense counsel --- is that "[t]he United States Attorney's Office,  
18 in carrying out a secret investigation, relayed the threats to all  
19 judges in the Central District of California, including this Court."  
20 (Mot. at 1.) As explained above and below, this statement --- along  
21 with the repeated assertions and insinuations that the prosecution  
22 team has engaged in multiple *ex parte* communications with the courts  
23 --- is patently false.

24  
25 <sup>4</sup> Defendants appear to claim that the government's reliance on  
26 the threats when seeking an anonymous jury purportedly means the  
27 threats were particularly "credible." (See, e.g., Mot. at 13-14.)  
28 Defendants misunderstand the government's argument. Whether the  
threats were credible or serious is irrelevant; the significance of  
the anonymous threats is that they were caused by the robust --- and  
continuous --- media attention related to this case and to show that  
similar actions may be taken to intimidate and/or influence jurors.

1       **K. This Court Has Already Denied Defendants' Request to Recuse**  
2       **and Stay Proceedings, Finding There Is "No Basis" for Any**  
3       **Judge in this District to Recuse**

4       On November 18, 2025, the Court heard oral argument on  
5       defendants' request to: (i) have an out-of-district judge hear their  
6       recusal motion; (ii) recuse the Court and all judges in the Central  
7       District; and (iii) stay proceedings in this case. The Court denied  
8       all three requests. The Court held that "there is simply no basis  
9       for [its] recusal, [the magistrate judge's] recusal, or to stay  
10       anything," reasoning that "it simply is not the case" that the  
11       threats in this case --- "where at no time has anyone thought that  
12       the defendants here had any role in this" --- "can force a judge off  
13       the case." (Ex. D at 18.)

14       **III. ARGUMENT**

15       **A. Recusal of Any Prosecutor in the Central District is Wholly**  
16       **Unwarranted**

17       1. Legal Standard

18       The separation of powers "requires judicial respect for the  
19       independence of the prosecutor," which "generally means that [courts]  
20       do not have a license to intrude into the authority, powers and  
21       functions of prosecutors." United States v. Williams, 68 F.4th 564,  
22       571 (9th Cir. 2023) (cleaned up). Disqualification of government  
23       counsel necessarily invades into the role of the executive branch  
24       because it implicates the separation of powers. Id. Accordingly,  
25       recusal of a prosecutor demands "a clear basis in fact and law"  
26       demonstrating "a violation of the Constitution, a federal statute, or  
27       a procedural rule." Id. at 571, 573 (cleaned up). The "risk of  
28       offending separation-of-powers principles when disqualifying an  
entire office of Executive branch attorneys" is even greater and

1 "seldom warranted," --- unsurprisingly, "every circuit court that has  
2 reviewed an officewide disqualification has reversed." Id. at 572  
3 (collecting cases). Such relief is an "an extreme remedy" that is  
4 "only appropriate in the most extraordinary circumstances." Id. at  
5 573.

6 Before a court may disqualify even a single prosecutor, a  
7 defendant "must demonstrate prejudice from a prosecutor's conflict of  
8 interest" or "present clear and convincing evidence of prosecutorial  
9 misconduct." Id. (cleaned up); see also United States v. Lorenzo,  
10 995 F.2d 1448, 1453 (9th Cir. 1993). Only after the court makes  
11 those attorney-specific factual findings and legal conclusions is  
12 disqualification of government counsel appropriate; this cannot be  
13 done "merely as a precautionary measure." Williams, 68 F.4th at 573-  
14 74.

15 The mere appearance of a conflict of interest is insufficient to  
16 warrant disqualification. Lorenzo, 995 F.2d at 1453; see also United  
17 States v. Heldt, 668 F.2d 1238, 1276 n. 80 (D.C. Cir. 1981) (noting  
18 that "[t]he potential conflict of interest . . . would have to be  
19 very strong before disqualification would be justified . . . [and]  
20 would require proof, by clear and convincing evidence, of a prima  
21 facie case of misconduct on the part of the AUSA."). Indeed,  
22 establishing a prosecutorial conflict of interest requires showing a  
23 more severe conflict than establishing the conflict of a judge, as  
24 the "standards of neutrality for prosecutors are not necessarily as  
25 stringent." Young v. U.S. ex rel. Vuitton et Fils S.A., 481 U.S.  
26 787, 810-11 (1987). And just as a defendant cannot manipulate his  
27 choice of judge by threatening the court, United States v. Holland,  
28 519 F.3d 909, 915 (9th Cir. 2008), "a criminal defendant cannot cause

1 the recusal of his prosecutor by threatening the prosecutor or having  
2 him threatened," Resnover v. Pearson, 754 F. Supp. 1374, 1389 (N.D.  
3 Ind. 1991).

4                   2. Defendants' Motion is Misleading and Meritless

5                   Defendants' motion misrepresents facts, makes repeated  
6 references to *ex parte* communications that did not happen, and cites  
7 no caselaw supporting their extraordinary request for prosecutorial  
8 recusal. The motion to recuse *any* prosecutor, let alone all  
9 prosecutors, in the Central District should be denied.

10                  To start, the government corrects multiple false statements and  
11 suggestions in the motion. Throughout the filing, defense counsel  
12 assert that the prosecution team had "*ex parte* communications" with  
13 the courts about the threats. (See, e.g., Mot. at 1, 2, 6, 7, 8, 9,  
14 11, 12, 14, 15, 16, 19). Indeed, the crux of their misconduct claim  
15 is that the government's "pattern of nondisclosure and *ex parte*  
16 communication over a period of seven months undermines both the  
17 appearance and the reality of fairness." (Mot. at 12.) However, as  
18 detailed above, this claim is baseless and not grounded in fact.  
19 Neither the USAO nor the FBI had any substantive communications with  
20 the courts --- let alone *ex parte* --- about the threats to the  
21 magistrate judge or the AUSA. As made clear in the discovery  
22 attached as government's Exhibits A and B, the only communication  
23 from the USAO or FBI that involved court staff was the AUSA's  
24 cursory, non-substantive e-mail responding to the Deputy Marshal's  
25 notification email on February 25, 2025 (i.e., Ex. B). The content  
26 of the communication had no bearing on this prosecution, as the Court  
27 already found when it determined there was "no basis" for any  
28 judicial officer to recuse. And there is no factual basis to

1 conclude that any member or employee of the judiciary was aware of  
2 the April 2025 threat to the AUSA. For that reason, defense  
3 counsels' explicit, bold claim that "[t]he United States Attorney's  
4 Office, in carrying out a secret investigation, relayed the threats  
5 to all judges in the Central District of California, including this  
6 Court" is bewildering given its complete lack of factual support and  
7 provocative suggestion that the USAO alerted nearly 60 district and  
8 magistrate judges to the threats. (Mot. at 1.)

9 The merits of defendants' demand for recusal and claim of  
10 misconduct fare no better than their motion's factual accuracy.  
11 Defendants' claim of prejudice appears to be that government's  
12 decision to disclose the threats after defendant Banks' May 8 and  
13 June 6 detention hearings prevented them from seeking to recuse the  
14 magistrate judge and this Court. But that claim hinges on the  
15 mistaken premise that the voicemails received by the magistrate judge  
16 were relevant to either courts' findings that defendant Banks was a  
17 flight risk and danger to the community. They were not. The threats  
18 by anonymous actors have no bearing on the detention analysis: they  
19 do not impact that defendant Banks is charged with serious crimes  
20 including murder-for-hire resulting in death; they do not change that  
21 evidence shows this is not the first murder-for-hire scheme connected  
22 to defendant Banks; and they do not unbook the three international  
23 flights defendant Banks scheduled immediately after his  
24 co-conspirators were arrested.

25 Even if the threats were somehow relevant (they are not),  
26 defendants cannot show prejudice because they brought their recusal  
27 motion and this Court rejected it as meritless. Specifically, during  
28 the November 18 hearing, the Court found "there is simply no basis

1 for [its] recusal, [or the magistrate judge's] recusal," as the  
2 threats were made by "someone who just was agitated and acted out  
3 . . . but that just has nothing to do with these defendants." (Ex. D  
4 at 18.) Thus, defendants cannot claim they were prejudiced because  
5 they could not file a meritless motion to recuse either the  
6 magistrate judge or this Court. This is especially so given this  
7 Court's de novo review of defendant Banks' arguments on June 8, and  
8 this Court's unambiguous ruling on November 18 that neither it nor  
9 the magistrate judge had any basis to recuse.<sup>5</sup>

10 Moreover, defendants cite no rule, statute, or case showing "a  
11 clear basis in fact and law" that the prosecutors in this case  
12 committed any misconduct by deciding to disclose the threats on  
13 October 1, 2025. Williams, at 573 (cleaned up). This is because  
14 they cannot, as the government disclosed the threats when they became  
15 relevant to this case --- i.e., when the government relied on the  
16 threats in support of its motion for an anonymous jury.<sup>6</sup> Defendants'  
17 suggestion that the government was required to provide the defense  
18 with immediate updates about investigations into threats and/or  
19 improper attempts to influence individuals connected to this case is  
20

---

21 <sup>5</sup> And as noted, under Section 455, the court itself is obligated  
22 to determine whether it should recuse. See United States v. Sibla,  
23 624 F.2d 864, 867-68 (9th Cir. 1980) (Section 455 "is directed to the  
judge, rather than the parties, and is self-enforcing on the part of  
the judge."). There is simply no basis to conclude that such  
evaluation was not conducted by the courts in this case prior to the  
November 18 hearing.

24 <sup>6</sup> Contrary to defendants' assertions during the November 18  
hearing, the timing of the government's disclosure was not  
25 gamesmanship. In its motion for an anonymous jury, the government  
highlighted that the public nature of this trial has already led to  
26 actions by third parties attempting to influence the proceedings.  
Such actions --- whether they were credible threats or not --- pose a  
27 palpable risk of infringing on jurors' fear of reprisal and  
28 independence in their fact-finding mission. See supra n. 4.

1 wrong. As explained above, there is absolutely no basis to conclude  
2 that either court failed to evaluate its ethical duties under Section  
3 455 throughout this case.

4 Finally, defendants' suggestion that the SSI was vindictive or  
5 in anyway related to the threat received by the AUSA (Mot. at 6), is  
6 baseless and belied by written, internal deliberative process  
7 materials. See supra n. 1. As previously briefed before the Court,  
8 the SSI was sought and returned following a motion challenging when  
9 certain of defendant Banks' violent rap lyrics were written.

10 The weakness of defendants' motion is also apparent from the  
11 authority cited in the motion. Rather than citing any analogous  
12 caselaw supporting prosecutorial recusal, defendants tellingly cite  
13 to cases that have nothing to do with the facts here. In Young v.  
14 U.S. ex rel. Vuitton et Fils S.A., 481 U.S. 787 (1987), the Supreme  
15 Court held that it was error for a trial court to appoint counsel for  
16 a party that is the beneficiary of a court order to undertake  
17 criminal contempt prosecutions for alleged violations of that order.  
18 In United States v. Kojayan, 8 F.3d 1315 (9th Cir. 1993), the Ninth  
19 Circuit held that a prosecutor committed misconduct by withholding  
20 material information about a cooperating witness from the defense and  
21 mispresenting facts about the witness to the court and jury. And in  
22 Williams, the Ninth Circuit reversed a judge's order recusing an  
23 entire United States Attorney's office based on an AUSA's alleged  
24 failure to disclose that a defense attorney had simultaneously  
25 represented a defendant and a cooperator. None of these cases  
support defendants' bold request to recuse any prosecutor in this  
district based on the government's decision to investigate and  
disclose third-party threats made by individuals with no apparent

1 connection to defendants. In short, just like their request for  
2 judicial recusal, defendants have failed to establish any basis for  
3 prosecutorial recusal.

4 **B. There is No Basis to Dismiss the Indictment, Let Alone  
5 Grant Any Relief to Defendants**

6 The "drastic step" of "dismissing an indictment is a disfavored  
7 remedy." United States v. Rogers, 751 F.2d 1074, 1076-77 (9th Cir.  
8 1985). "A district court may dismiss an indictment for government  
9 misconduct for one of two reasons, each with its own standard: either  
10 because it finds a serious due-process violation or because it  
11 concludes that dismissal is warranted under its supervisory powers."  
12 United States v. Bundy, 968 F.3d 1019, 1030 (9th Cir. 2020).

13 Dismissal for a due process violation requires the government's  
14 conduct to "be so grossly shocking and outrageous as to violate the  
15 universal sense of justice." Id. (cleaned up). The due process  
16 argument "is usually raised in situations where law enforcement  
17 conduct involves extreme physical or mental brutality or where the  
18 crime is manufactured by the government from whole cloth." United  
19 States v. Green, 962 F.2d 938, 942 (9th Cir. 1992) (cleaned up).<sup>7</sup> A  
20 district court may dismiss an indictment with prejudice for  
21 prosecutorial misconduct under its supervisory powers "only if there  
22 is (1) flagrant misbehavior and (2) substantial prejudice," and there  
23 is "no lesser remedial action available." Bundy, 968 F.3d at 1031  
24 (cleaned up).

25  
26  
27 <sup>7</sup> "Indeed, there are only two reported decisions in which  
28 federal appellate courts have reversed convictions" for claims of  
outrageous government conduct. United States v. Black, 733 F.3d 294,  
302 (9th Cir. 2013) (citing cases from 1971 and 1978).

1       Defendants are entitled to no relief, much less the drastic  
2 remedy of dismissal of the SSI with prejudice. As explained above,  
3 the government disclosed the threats when they became relevant to  
4 motion practice in this case October 2025. This Court has already  
5 rejected the core of defendants' claim that they suffered any  
6 prejudice by continuing to litigate before the magistrate judge and  
7 this Court. Quite simply, this Court need not take any remedial  
8 action because there is no wrong to remediate.

9       **C. An Evidentiary Hearing is Unnecessary and Unwarranted**

10       As made clear by the above-described chronology and the Court's  
11 findings at the November 18 hearing, there are no disputes of fact  
12 (let alone material facts) that, if resolved in defendant's favor  
13 would entitle defendants to relief. See United States v. Irwin, 612  
14 F.2d 1182, 1187 (9th Cir. 1980). Accordingly, the Court should deny  
15 the request for an evidentiary hearing.

16       **IV. CONCLUSION**

17       For the foregoing reasons, defendants' motion to recuse any  
18 prosecutor in the Central District and dismiss the SSI should be  
19 denied. The USAO should continue to prosecute this brazen murder  
20 that occurred in its district, and will continue to do so without  
21 fear or favor.

22

23

24

25

26

27

28