



LESLIE A. TRAVIS

leslie.travis@guam.gov

JEFFREY A. MOOTS

jeffrey.moots@guam.gov

OFFICE OF THE GOVERNOR OF GUAM

Ricardo J. Bordallo Governor's Complex

Adelup, Guam 96910

P.O. Box 2950, Hagåtña, Guam 96932

Office: (671) 473-1117 | Fax: (671) 477-4826

Attorneys for the

Honorable Lourdes A. Leon Guerrero

Governor of Guam

IN THE UNITED STATES DISTRICT COURT OF GUAM

IN RE:

**REQUEST OF LOURDES A. LEON
GUERRERO, *I MAGA'HÅGAN*
GUÅHAN, RELATIVE TO THE
AUTHORITY OF THE ATTORNEY
GENERAL OF GUAM TO APPROVE
AUTONOMOUS AGENCY
CONTRACTS**

Case No. 25-CV-00041

Removed from the Supreme Court of Guam

Case No. CRQ25-001

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO REMAND
(28 U.S.C. § 1447(c))**

I. INTRODUCTION

On October 31, 2025, Petitioner Lourdes A. Leon Guerrero, *I Maga'hågan Guåhan*, Governor of Guam, filed a Request for Declaratory Judgment (“Petition”) pursuant to 5 GCA § 4104 as an original special proceeding in the Supreme Court of Guam, seeking a declaration concerning the authority of the Attorney General of Guam to approve autonomous agency contracts pursuant to 5 GCA § 5150.

On the same date, Attorney General Douglas B. Moylan (“AG Moylan”) filed a Notice of Removal in this Court, purporting to remove the Supreme Court proceeding to this Court.

Governor Leon Guerrero now moves to remand this matter to the Supreme Court of Guam, and that the Court issue an appropriate sanction under 28 U.S.C. § 1447(c) and its inherent authority to deter future abuse of the removal process.

II. ARGUMENT

The right to remove a case to federal court is statutory in nature, and the removing party has the burden of establishing that federal jurisdiction exists. *See Provincial Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009). Under 28 U.S.C. § 1441(a), only “civil actions brought in a State court” that could have been filed originally in federal court may be removed. Courts strictly construe Section 1441 against removal and “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). “A ‘defendant seeking removal has the burden to establish that removal is proper.’” *Canela v. Costco Wholesale Corp.*, 971 F.3d 845, 849 (9th Cir. 2020).

AG Moylan cannot meet his burden because his attempt to remove the Governor’s Petition fails every threshold requirement for removal. The Petition is not a civil action within the meaning of 28 U.S.C. § 1441(a). The Supreme Court of Guam is not a “state court” as that term is used in Section 1441(a). And the Petition presents no federal question that could support jurisdiction. Each of these defects is independently fatal to AG Moylan’s removal attempt. Together, these factors render removal plainly improper and warrant the imposition of sanctions against the Attorney General.

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A. AG Moylan is Not a “Defendant” Under 28 U.S.C. § 1441

Section 1441(a) authorizes removal only “by the defendant or defendants” in a civil action, which the Supreme Court has interpreted to mean that only the original defendant named in the initial pleading may remove under § 1441(a). *Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. 435, 441-43 (2019). The Ninth Circuit recently reaffirmed that only “the defendant or the defendants” *named in the initial pleading* may remove under § 1441(a) – unnamed or “real party in interest” entities have no right to remove. *Sharma v. HSI Asset Loan Obligation Trust 2007-1*, 23 F.4th 1167, 1170–71 (9th Cir. 2022). Section 1441(a) “contains no language allowing mistakenly omitted parties, wrongly excluded parties, or any other type of non-defendant to remove an action to federal court.” *Id.* at 1171.

Although AG Moylan identifies himself as the “defendant” in the Supreme Court matter, *see* Notice of Removal, ECF No. 1 at 1, AG Moylan is not a defendant in the Governor’s § 4104 proceeding. In fact, Section 4104 petitions are not filed against a defendant. Rather, the Supreme Court of Guam *invites* participants to appear as respondents or amici as it deems appropriate based on their institutional or legal interest. While Governor Leon Guerrero anticipates the Court may *invite* AG Moylan to appear as a Respondent in light of his statutory role under 5 GCA § 5150, Section 4104 neither contemplates nor authorizes the filing of an “answer” or responsive pleading to the Petition. While the Governor served courtesy copies of filings on the Office of the Attorney General, such service did not transform the Attorney General into a defendant or confer removal authority.

Because the Attorney General was not a party to the Governor’s § 4104 petition and was never served with process, his purported removal is procedurally void. This Court therefore lacks jurisdiction and must remand the matter to the Supreme Court of Guam.

B. This Court Lacks Jurisdiction Because a Section 4104 Petition is Not a “Civil Action.”

Section 1441(a) authorizes removal of only “civil actions” brought in a state court. However, the Governor’s Petition was filed pursuant to 5 GCA § 4104, which authorizes a special statutory proceeding that may be initiated *only* in the Supreme Court of Guam by the Governor or the Legislature to obtain an advisory declaration of law on questions concerning the powers and duties of government officials.

Section 4104 proceedings are not “civil actions” within the meaning of Section 1441. Unlike a lawsuit between private parties, a Section 4104 petition does not involve a complaint, service of process, discovery or any other features of a civil case. Rather, it presents a pure question of law for the Supreme Court’s determination, not a case or controversy seeking relief against an adverse party.

The Supreme Court of Guam has recognized that “the Organic Act grants the Legislature the ability to expand this Court’s original jurisdiction by law.” *In re Request of Leon Guerrero*, 2023 Guam 11 ¶ 21 (citing 48 U.S.C. § 1424-1(a)(1)). The Court reconciled this grant of legislative authority with separation-of-powers principles, observing that “standing is a self-imposed rule of restraint.” *Benavente v. Taitano*, 2006 Guam 15 ¶ 16. For this reason, while Congress cannot enlarge the jurisdiction of Article III courts beyond “cases” and “controversies,” it has empowered the Guam Legislature under Article IV to define the jurisdiction of territorial courts more broadly. The Legislature exercised that authority in enacting Section 4104, which authorizes the Supreme Court of Guam to issue intra-governmental declarations of law, jurisdiction that Article III courts constitutionally do not share. Because the Petition invokes that locally conferred power, it is not and cannot be a removable “civil action” under 28 U.S.C. § 1441(a).

Accordingly, because the Governor’s Petition is a special statutory proceeding rather than a civil action, this Court lacks removal jurisdiction under 28 U.S.C. § 1441(a).

C. This Court Lacks Jurisdiction Because Article III Prohibits Federal Courts from Issuing Advisory Opinions.

Even if a § 4104 petition could be characterized as a “civil action,” this Court still lacks subject matter jurisdiction because the Petition does not present an Article III “case” or “controversy.” The Supreme Court has clarified that, in determining whether removal jurisdiction exists, a federal court must ask whether the plaintiff could have filed the operative pleading in federal court in the first instance. *Home Depot U.S.A., Inc. v. Jackson*, 587 U.S. 435, 441 (2019) (holding that a district court must “evaluate whether the plaintiff could have filed its operative complaint in federal court”). Because a § 4104 petition could not have been filed in any Article III court—it invokes a jurisdiction conferred solely by Guam law to obtain intra-governmental declaratory guidance—it necessarily falls outside the judicial power of the United States.

Article III limits the jurisdiction of federal courts to “cases” and “controversies” involving adverse parties and prohibits the issuance of advisory opinions. *See Flast v. Cohen*, 392 U.S. 83, 95–96 (1968) (“No justiciable controversy is presented when the parties are asking for an advisory opinion....The oldest and most consistent thread in the federal law of justiciability is that the federal courts will not give advisory opinions.”). The rule against advisory opinions “implements the separation of powers prescribed by the Constitution and confines federal courts to the role assigned them by Article III.” *Id.* at 96; *see also Muskrat v. United States*, 219 U.S. 346, 361 (1911) (holding that federal judicial power does not extend to matters lacking adverse parties).

In contrast, Section 4104 petitions are not adversarial actions but requests for declaratory guidance from the Supreme Court of Guam concerning the powers and duties of public officials. These proceedings resemble advisory opinions rather than judicial controversies. Although Guam

law authorizes the Supreme Court to entertain Section 4104 proceedings even in the absence of an injury in fact, Article III confines federal judicial power to genuine “cases” and “controversies.” Because § 4104 petitions fall outside the judicial power conferred by Article III, this Court lacks constitutional authority to adjudicate the matter, and remand is required.

D. The Petition Does Not Raise a Federal Question.

In his Notice of Removal, AG Moylan alternatively claims that the Court has federal question jurisdiction over the Governor’s Petition. Notice of Removal, ECF No. 2 at 2. This argument has no merit.

As the Supreme Court explained in *Gunn v. Minton*, a case can “arise under” federal law in two ways: (1) when federal law creates the cause of action asserted; or (2) where a state law claim “necessarily raises a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities[.]” *Gunn v. Minton*, 568 U.S. 251, 257 (2013) (quoting *Grable & Sons Metal Products, Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308 (2005)).

Under the well-pleaded complaint rule, a federal question must appear on the face of the complaint. “The rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law.” *Id.*; see also *City of Oakland v. BP PLC*, 969 F.3d 895, 904 (9th Cir. 2020) (observing that plaintiffs “can generally avoid federal jurisdiction if a federal question does not appear on the face of the complaint.”); *Chargualaf v. Guam Daily Post-Core Tech*, No. CV 23-00024, 2024 WL 643118, at *4 (D. Guam Feb. 16, 2024), *reconsideration denied*, 2024 WL 3226299 (D. Guam 2024). To qualify, the federal issue must be (1) necessarily raised, (2) actually disputed, (3) substantial in the federal-system sense, and (4) capable of resolution in federal court without disrupting the federal–state balance approved by Congress. *Gunn*, 568 U.S. at 258. None of these elements is satisfied here.

The Governor's Petition asks two questions:

1. Whether, under Guam law, autonomous agencies that are not governed by the Central Accounting Act are required to obtain the Attorney General's approval prior to executing contracts; and
2. Whether 5 GCA § 5150 confers independent contract-approval authority upon the Attorney General, or merely defines the scope of review when such approval is otherwise required by law.

Petition, ECF No. 1-2 at 14. On its face, the Petition presents pure questions of Guam law – the interpretation of 5 GCA § 5150 and related local statutes. The matter can and should be resolved by applying Guam law alone. Any references to the Organic Act are, at most, background principles the Attorney General might invoke as a counterargument assuming he is invited to participate in the proceeding. Accordingly, the Governor's Petition does not raise a federal question on its face, and removal cannot be sustained under 28 U.S.C. § 1331.

E. The Attorney General is Not a Federal Officer Under 28 U.S.C. § 1442.

AG Moylan alternatively seeks removal under 28 U.S.C. § 1442, claiming that his office is an instrumentality of the federal government. Notice of Removal, ECF 1 at 6.

Section 1442 provides in relevant part:

§ 1442. Federal officers or agencies sued or prosecuted

(a) A civil action...commenced in a State court and that is against or directed to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

28 U.S.C. § 1442.

Federal officer removal law was enacted “to provide a federal forum for cases where federal officials must raise defenses arising from their official duties ... and to protect federal officers from interference by hostile state courts.” *Mesa v. California*, 489 U.S. 121, 137, 109 S.

Ct. 959, 969, 103 L. Ed. 2d 99 (1989) (quotation omitted). To invoke Section 1442, the removing party must show that: (1) he is a “person” within the meaning of the statute; (2) there is a causal nexus between his actions, taken pursuant to a federal officer’s directions, and the claims asserted; and (3) he can assert a colorable federal defense. *California by & through Harrison v. Express Scripts, Inc.*, 139 F.4th 763, 772 (9th Cir. 2025). While the federal officer removal statute is liberally construed, that guidance “must be understood in the broader context of the United States’ dual sovereign court system, where federal courts of limited jurisdiction must “scrupulously confine their own jurisdiction to the precise limits which the statute authorizing removal jurisdiction has defined.” *Id.* at 770 (citing *Healy v. Ratta*, 292 U.S. 263, 270 (1934)).

The question of whether territorial officials are “federal officers” has been addressed extensively in § 1983 caselaw, which distinguishes between officials acting under color of territorial law and those acting under color of federal law. Title 42 U.S.C. § 1983 provides a cause of action against persons acting under color of state or territorial law, but “provides no cause of action against federal agents acting under color of federal law.” *Billings v. United States*, 57 F.3d 797, 801 (9th Cir.1995).

As the District of Hawaii recently observed, while organic acts for early continental territories vested local officials with federal-officer status, organic acts enacted for the “overseas” territories delegate authority to locally elected territorial governments. *Hueter v. Kruse*, 576 F. Supp. 3d 743, 778 (D. Haw. 2021). “In the organized territories, it is clear that territorial officials are acting pursuant to ‘territorial law’ because Congress has delegated legal authority to each territory’s government through that territory’s organizing legislation.” *Id.* at 777. Guam officials are not officers of the federal government “even if the actions they took as territorial officers were *required by federal law.*” *Id.*

The Attorney General is not a federal officer within the meaning of Section 1442 or otherwise. While his office is referenced in the Organic Act, he is expressly described therein as “the Chief Legal Officer of the Government of Guam.” 48 U.S.C. § 1421g(d)(1). The Petition seeks interpretation of his authority under Guam law, to wit, 5 GCA § 5150, to review autonomous agency contracts. Nothing in the Organic Act suggests that Congress intended the Attorney General to qualify as a federal officer. *See Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Aurelius Inv., LLC*, 590 U.S. 448, 464-65 (2020) (holding that members of Puerto Rico’s Financial Oversight and Management Board established by the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) were not “Officers of the United States” where Congress identified the Board as an entity within the territorial government).

Nor is the Attorney General “an instrumentality of the federal government.” Section 1442 applies only to officers of the United States or persons acting under their direction in carrying out federal functions. *See* 28 U.S.C. § 1442(a)(1); *Mesa v. California*, 489 U.S. 121, 137 (1989). The Attorney General of Guam does not act under the supervision or control of any federal officer or agency, and his duties are defined entirely by Guam law. The mere fact that Congress enacted the Organic Act—which establishes Guam’s local government—does not convert territorial officials into federal officers or their offices into federal instrumentalities. Because AG Moylan is neither a federal officer nor a person acting under one, Section 1442 provides no basis for removal.

F. Sanctions Against AG Moylan Are Warranted.

AG Moylan’s attempt to remove this proceeding was objectively unreasonable. Removal under 28 U.S.C. §§ 1441 and 1442 requires at minimum a removable “civil action” and a plausible basis for federal jurisdiction. The Attorney General could not reasonably have believed that a petition filed in the Supreme Court of Guam under 5 GCA § 4104 – a proceeding unique to Guam law, advisory in nature, and constitutionally nonjusticiable in federal court – satisfied those

requirements. Because none of the statutory or constitutional bases for removal are satisfied, remand is mandatory under 28 U.S.C. § 1447(c).

By removing this matter, the Attorney General disregarded settled statutory limits on removal jurisdiction and disrupted a pending proceeding before Guam's highest court. His improper removal of this matter has delayed resolution of an urgent question of local law and burdened this Court with a matter it lacks power to hear. Such conduct undermines both judicial efficiency and comity between the federal and territorial courts.

The Court has inherent authority and statutory authority to impose sanctions for conduct that unreasonably and vexatiously multiplies proceedings or abuses the judicial process. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45 (1991). The Governor respectfully submits that an award of sanctions is warranted to address this plainly baseless removal and to discourage further interference with the jurisdiction of the Supreme Court of Guam.

III. CONCLUSION

For the foregoing reasons, the Governor respectfully requests that this Court remand this matter to the Supreme Court of Guam for further proceedings and impose appropriate sanctions as are necessary to deter continued misuse of the removal process and to preserve the proper balance of authority between the federal and territorial courts.

Respectfully submitted this 4th day of November, 2025.

OFFICE OF THE GOVERNOR OF GUAM
Office of Legal Counsel

By: /s/ Leslie A. Travis
LESLIE A. TRAVIS
Attorneys for Plaintiff
Lourdes A. Leon Guerrero,
Governor of Guam

CERTIFICATE OF SERVICE

I certify that I have served opposing counsel by electronically filing the foregoing document with the Clerk of Court for the United States District Court of Guam using the CM/ECF system.

Douglas B. Moylan
Attorney General of Guam
Office of the Attorney General of Guam
134 W. Soledad Avenue
Ste. 802 Bank of Hawaii Building
Hagåtña, Guam 96910
(671) 475-2710
dbmoylan@oagguam.org

William Lyle Stamps
Assistant Attorney General
Office of the Attorney General of Guam
Civil Division
134 W. Soledad Avenue, Ste. 302
Hagåtña, Guam 96910
(671) 475-2710
wstamps@oagguam.org

Respectfully submitted this 4th day of November, 2025.

OFFICE OF THE GOVERNOR OF GUAM
Office of Legal Counsel

By: /s/ Leslie A. Travis
LESLIE A. TRAVIS
Attorneys for
Lourdes A. Leon Guerrero,
Governor of Guam