

1 **MARIANNE WOLOSCHUK**
2 Legal Counsel
3 Guam Power Authority
4 Gloria B. Nelson, Public Service Bldg.
5 688 Route 15, Fadian
6 Mangilao, Guam 96913
7 Ph: (671) 648-3227
8 Fax: (671) 648-3290
9 E-mail: mwoloschuk@gpagwa.com

10 *Attorney for the Guam Power Authority*

11 **IN THE DISTRICT COURT OF GUAM**

12	GUAM POWER AUTHORITY,)	CIVIL CASE NO. 1:25-CV-00029
13)	
14	Petitioner,)	
15)	
16	vs.)	MEMORANDUM OF POINTS AND
17)	AUTHORITIES IN SUPPORT OF
18	ATTORNEY GENERAL OF GUAM,)	MOTION TO REMAND
19)	(28 U.S.C. § 1447(c))
20	Respondent.)	
21)	
22)	

23 **I. Introduction**

24 Petitioner Guam Power Authority (GPA) sought a writ of mandate in the Superior Court
25 of Guam against respondent Attorney General, alleging violations of local law governing the
26 duties of the Attorney General and his obligations in the event of a conflict of interest. The
27 Attorney General removed this action to federal court by filing a notice of removal to the United
28 States District Court of Guam. (ECF No. 1). GPA now moves to remand this action to the Superior
29 Court of Guam pursuant to 28 U.S.C. § 1447 (governing procedure after removal).

30 **II. Factual and Procedural Background**

31 Earlier this year, GPA obtained regulatory approval from its governing body, the
32 Consolidated Commission on Utilities (CCU), to issue a solicitation to build electrical
infrastructure for a new hospital, the Mangilao Medical Campus (MMC). The project will be paid

1 for with a portion of Guam's share of federal grant monies from the American Rescue Plan Act
2 (ARPA) Coronavirus State and Local Fiscal Recovery Funds (SLFRF). Because this
3 infrastructure project is valued at more than \$500,000, the Attorney General must review the
4 procurement under section 5150 of the Guam Procurement Law, 5 GCA § 5150.
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7 Upon learning of these plans, the Attorney General went on the record publicly as being
8 opposed to the project. He made repeated statements to the press voicing his opposition to it. He
9 even issued letters to officials at GPA's sister utility, the Guam Waterworks Authority,
10 threatening them with criminal prosecution if they proceeded with a corresponding project to
11 build water/waste water treatment infrastructure for the MMC using the same funding source.
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14 Due to the Attorney General's conflict of interest from having formed an opinion that
15 would prevent him from conducting a dispassionate review of GPA's MMC procurement, GPA
16 asked the Attorney General to appoint conflict-free counsel to represent GPA in the section 5150
17 review. GPA also asked the Attorney General to provide evidence of a conflict wall shielding the
18 Attorney General and his criminal prosecutors from interfering with GPA's procurement review.
19 The Attorney General refused to do so.
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23 GPA commenced this action on June 12, 2025, by filing a petition for writ of mandate in
24 the Superior Court of Guam, to compel the Attorney General to appoint conflict-free counsel to
25 GPA and to provide evidence of the ethical wall screening himself and his prosecutors from the
26 section 5150 review of GPA's MMC infrastructure procurement.
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29 On June 17, 2025, the Attorney General removed this action to federal court by filing a
30 notice of removal to the United States District Court of Guam on the basis of federal question
31 jurisdiction. Civil Cover Sheet, Basis of Jurisdiction: Federal Question (June 17, 2025) (ECF
32 No. 1-1). The Attorney General filed an amended notice of removal on July 8, 2025. (ECF No. 4).

1 GPA now files this motion to remand the matter to the Superior Court of Guam, where it
2 belongs.
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4 III. Argument

5 A. Relevant law governing removal and remand.

6 “[A]ny civil action brought in a State court of which the district courts of the United States
7 have original jurisdiction, may be removed by the defendant or the defendants, to the district court
8 of the United States for the district and division embracing the place where such action is
9 pending.” 28 U.S.C. § 1441(a). All that is needed for removal under section 1441(a) is that the
10 action could have originally been commenced in federal court based on federal question
11 jurisdiction.
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14 “The district courts shall have original jurisdiction of all civil actions arising under the
15 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Thus, a party may remove
16 a case from state or local court to the federal court when the plaintiff’s complaint alleges a claim
17 arising under federal law. “A case arises under federal law either where federal law creates the
18 cause of action or where the vindication of a right under state law necessarily turns on some
19 construction of federal law.” *Republican Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088 (9th
20 Cir. 2002) (cleaned up).
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24 Whether a matter can be removed is determined from the plaintiff’s pleadings at the time
25 of removal. To determine whether federal question jurisdiction is present, courts rely on the “well-
26 pleaded complaint rule” which states that “federal jurisdiction exists only when a federal question
27 is presented on the face of the plaintiff’s properly pleaded complaint.” *Id.* at 1089. “The well-
28 pleaded complaint rule makes the plaintiff the ‘master’ of his complaint; he has the right to decide
29 upon what law, state or federal, he will rely.” *Casino v. Guam Election Comm’n*, slip op. No. Civ.
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1 06-00035, 2006 WL 3147659, *1 (D. Guam Oct. 31, 2006) (citing, *inter alia*, *Caterpillar, Inc. v.*
2 *Williams*, 482 U.S. 386, 391 (1987)). Thus, the well-pleaded complaint rule governs the presence
3 or absence of federal question jurisdiction and provides that federal jurisdiction exists only when
4 the plaintiff's pleading presents a federal question.
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6 The defenses or counterclaims that a party may raise are not included on the face of the
7 complaint and do not form part of a well-pleaded complaint. A party opposing remand cannot
8 rely on defenses or counterclaims to supply the basis for federal question jurisdiction. Removal
9 is proper only if the four corners of the complaint establish federal question jurisdiction. Thus,
10 the law does not authorize removal based on a defense or anticipated defense that is federal in
11 character. *ARCO Env'tl. Remediation, LLC v. Dep't of Health & Env'tl. Quality*, 213 F.3d 1108,
12 1113 (9th Cir. 2000) (holding that a case may not be removed to federal court on the basis of a
13 federal defense) (citing *Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust*, 463 U.S.
14 1, 14 (1983)).
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19 A case may arise under federal law for purposes of removal in one of two ways, either
20 when a federal law creates the cause of action asserted, or in a special small category of state law
21 claims that meet the *Grable* test. *Gunn v. Minton*, 568 U.S. 251, 257-58 (2013) (citing *Grable &*
22 *Sons Metal Prods. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314 (2005)). Under the *Grable* test,
23 "federal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised,
24 (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without
25 disrupting the federal-state balance approved by Congress." *Gunn*, 568 U.S. at 258 (citing *Grable*,
26 545 U.S. at 314).
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30 "[F]ederal courts are courts of limited jurisdiction and possess only that power authorized
31 by the Constitution and statute." *Casino*, 2006 WL 3147659 at *1 (citing *Kokkonen v. Guardian*
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1 *Life Ins. Co. of America*, 511 U.S. 375, 377 (1994)) (internal quotation marks omitted). Federal
2 courts have the power to remand a case “on the basis of any defect in removal procedure” or
3 because “the district court lacks subject matter jurisdiction.” 28 U.S.C. § 1447(c). When removal
4 is based on federal question jurisdiction, the burden of demonstrating federal jurisdiction rests on
5 the party seeking removal, rather than the party seeking remand. *See Casino*, 2006 WL 3147659
6 at *1 (citing *Westinghouse Elec. Corp. v. Newman & Holtzinger, P.C.*, 992 F.2d 932, 934 (9th
7 Cir. 1993)) (“[T]he respondent seeking removal has the burden of establishing that the federal
8 court has jurisdiction.”).

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12 “[R]emoval statutes are to be strictly construed against removal jurisdiction with all
13 doubts resolved in favor of remand.” *Casino*, 2006 WL 3147659 at *1 (citing *Gauss v. Miles,*
14 *Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)). “If at any time before final judgment it appears that the
15 district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).
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18 The Attorney General present several arguments, none of which militates in favor of
19 removal. GPA will place these in logical groups and address them in turn.

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21 **B. The Organic Act does not provide for a federal cause of action, nor does it confer federal
22 question jurisdiction under the *Grable* test.**

23 The Attorney General’s first set of arguments that this action is removable centers on the
24 relation of this action to the Organic Act. According to the Attorney General:

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Petitioner’s request to the Superior Court of Guam for the issuance of an
alternative writ of mandate to compel the Attorney General to appoint conflict-
free counsel to review certain GPA procurements violates the 1950 Organic Act
of Guam (Title 48 USC Chapter 8A) in that the Consolidated Commission on
Utilities (“CCU”) impermissibly obligated and expended APRA/SLFRF funds
when it “authorized GPA’s GM to sign a subgrant agreement with GEDA
[footnote omitted] [for] \$35,448,983.87 in SLFRF monies to provide funding for
the installation of electrical power infrastructure project in Mangilao,” in that
Petitioner GPA lacks standing to sue in violation of said federal law governing this
territory.

1 (ECF No. 4 (Amend. Notice of Removal) ¶ 2). In addition, the Attorney General contends that
2 the CCU is an illegal body that violates the Governor's Organic Act authority to appoint the heads
3 of executive branch agencies. (ECF No. 4 (Amend. Notice of Removal) ¶ 3).

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5 As best one can tell, the Attorney General appears here to be arguing that (1) the Organic
6 Act creates a cause of action; (2) the CCU is an inorganic body that usurped the Governor's role
7 and impermissibly obligated and expended APRA/SLFRF funds; and (3) GPA lacks standing to
8 bring a writ action against the Attorney General. These arguments find no support in the law and
9 facts.
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12 In *Republican Party of Guam v. Gutierrez*, 277 F.3d 1086 (9th Cir. 2002), plaintiffs Guam
13 Legislature and the Republican Party sued for declaratory judgment and injunctive relief in
14 district court under federal question jurisdiction, arguing that the Governor of Guam violated his
15 Organic Act duty to faithfully execute the law when he disregarded a statute governing the
16 appointment of members to the Guam Election Commission. *Id.* at 1088. The district court ruled
17 in favor of the plaintiffs, but the Ninth Circuit Court of Appeals reversed and dismissed for lack
18 of subject matter jurisdiction because the case did not present a federal question under 28 U.S.C.
19 § 1331. *Republican Party of Guam*, 277 F.3d 1088.
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23 The Ninth Circuit found that the plaintiffs' claims arose not from federal law but rather
24 from the interpretation of a Guam law under the Organic Act. *Id.* at 1090. A dispute over the
25 validity of a local law, despite referencing a federal statute, the Organic Act, does not
26 automatically qualify for federal jurisdiction. *Id.*
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29 Similarly, in this case, the Attorney General disputes the validity of the CCU's enabling
30 legislation, *see* 12 GCA Ch. 79, by referring to a federal law, the Organic Act. This dispute does
31 not qualify for federal question jurisdiction. Whether the CCU interferes with the Governor's role
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1 is a matter of local law. Referencing the Organic Act does not turn GPA’s writ action into a matter
2 with federal question jurisdiction. Further, the CCU did not obligate the SLFRF funds; the
3 Governor did. The CCU did not expend the funds; the funds remain unspent.

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5 As for GPA’s standing to sue the Attorney General, that comes from the Guam Supreme
6 Court, which ruled that GovGuam agencies aggrieved by the Attorney General’s conduct in
7 procurement reviews have the authority to bring a writ action against him. *See In re Leon*
8 *Guerrero*, 2024 Guam 18 ¶ 77 (“Normally, if the Attorney General neglects or otherwise refuses
9 to perform a mandatory duty of his office—such as reviewing contracts over \$500,000 for form
10 and legality—a writ of mandate is the proper vehicle to compel performance of his
11 nondiscretionary duties.”).

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13 Under *Grable*, the Attorney General must meet all four prongs of the test by showing that
14 s federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of
15 resolution in federal court without disrupting the federal-state balance approved by Congress.

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17 Addressing just the third prong, for instance, the Attorney General would have to show
18 that GPA’s case raises substantial federal interests, meaning that the Attorney General would have
19 to meet the following four factors:

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23 (1) the case includes a federal agency, and particularly, that agency’s
24 compliance with the federal statute is in dispute;
25 (2) the federal question is important (i.e., not trivial);
26 (3) a decision on the federal question will resolve the case (i.e., the federal
27 question is not merely incidental to the outcome); and
28 (4) a decision as to the federal question will control numerous other cases (i.e.,
29 the issue is not anomalous or isolated).

30 *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 700 (2006).

31 This case is about the Attorney General’s refusal to appoint conflict-free counsel to
32 conduct a GovGuam agency’s procurement review and erect a conflict wall to screen himself and

1 his prosecutors. No federal agency is involved here. The local laws and rules are of little
2 importance to the federal government. Resolving the federal spending issue will not resolve the
3 case, because the Attorney General still needs to ensure that GovGuam agencies have conflict-
4 free counsel to review their procurements. A decision by this court will not control numerous
5 other cases, only this one. Other agencies with this issue will flock to the Superior Court as
6 instructed by the Supreme Court of Guam in *In re Leon Guerrero*, 2024 Guam 18 ¶ 77.
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9 The Attorney General has failed to show that the Organic Act supports removal of this
10 action under federal question jurisdiction. This matter should therefore be remanded to the
11 Superior Court.
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13 **C. The spending of federal grant monies does not support a federal cause of action, nor does**
14 **it confer federal question jurisdiction under *Grable*.**

15 The Attorney General's second set of arguments that this action is removable centers on
16 questions related to alleged improper spending of federal funds. He argues that GPA's writ
17 petition turns on substantial questions of federal law and implicates significant federal issues
18 related to whether GPA has impermissibly obligated or expended ARPA funds and violated the
19 SLFRF rules. (ECF No. 4 (Amend. Notice of Removal) ¶ 1). He points out that the U.S.
20 government can claw back misspent SLFRF funds. (ECF No. 4 (Amend. Notice of Removal) ¶ 7).
21 He adds that a district court case, in which he sued the Governor alleging improprieties in the
22 purchase of land for the MMC using SLFRF funds, is related to GPA's writ petition and therefore
23 removal will preserve scarce judicial resources, promote judicial efficiency, and avoid conflicting
24 decisions on the same subject matter.
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26 As above, ARPA does not create a cause of action. Further, GPA did not obligate the
27 SLFRF funds; the Governor did. GPA did not expend the funds; the funds remain unspent. The
28 federal government's ability to claw back misspent funds does not imprint a federal question on
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1 GPA's desire for conflict-free counsel and an ethical wall for its procurements. Removal will not
2 conserve judicial resources or promote efficiency. The Attorney General's case about the land
3 sale will does not relate to his duties under *In re Leon Guerrero*, the Guam Procurement Law, or
4 the Guam Rules of Professional Conduct. The two matters are separate and will not result in
5 conflicting decisions.
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8 The Attorney General cannot rely on defenses or counterclaims to supply the basis for
9 federal question jurisdiction. Removal is proper only if the four corners of the writ petition
10 establish federal question jurisdiction. Here, GPA's petition relies exclusively on local law in
11 asserting a cause of action for issuance of a writ of mandate and therefore provides no basis for
12 federal jurisdiction. Because the face of GPA's petition does not identify a federal question, this
13 court lacks federal question jurisdiction, regardless of any federal counterclaims asserted by the
14 Attorney General.
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17 As above, the Attorney General does not meet the *Grable* test for removal. The Attorney
18 General has failed to show that pending issues support removal of this action under federal
19 question jurisdiction. This matter should therefore be remanded to the Superior Court.
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22 **D. The Attorney General is not a federal officer entitled to the benefit of the federal officer**
23 **removal statute.**

24 Lastly, the Attorney General argues that this matter is subject to removal because he
25 qualifies as a federal officer under the removal statute. (ECF No. 4 (Amend. Notice of Removal)
26 ¶ 4). This argument fails because it misapprehends which officials fall within the purview of the
27 law.
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29 Section 1442 permits the removal of a civil action against a United States officer or any
30 person acting under that officer "in an official or individual capacity, for or relating to any act
31 under color of such office or on account of any right, title or authority claimed under any Act of
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1 Congress for the apprehension or punishment of criminals or the collection of the revenue.”
2 28 U.S.C. § 1442(a)(1). The purpose of this statute “is to protect the Federal Government from
3 the interference with its operations that would ensue were a State able, for example, to arrest and
4 bring to trial in a State court for an alleged offense against the law of the State, officers and agents
5 of the Federal Government acting within the scope of their authority.” *Watson v. Phillip Morris*
6 *Cos.*, 551 U.S. 142, 150 (2007) (cleaned up). The statute protects federal interests by ensuring
7 that federal officers are haled into federal court when their actions concern their federal duties.
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11 Here, in order for section 1442 to apply, the Attorney General would have to show that he
12 is a federal officer or that he is acting under the direction of a federal officer in performing an act
13 under color of federal office, and that the act is causally connected with the claims against him.
14 *DeFiore v. SOC LLC*, 85 F.4th 546, 554 (9th Cir. 2023). The Attorney General cannot make the
15 necessary showing.
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17 First, the Attorney General is not a United States officer. The Organic Act designates the
18 Attorney General of Guam as “the Chief Legal Officer of the Government of Guam.” 48 U.S.C.
19 § 1421g(d)(1). The Organic Act does not designate the Attorney General as a federal officer.
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22 While the Organic Act provides for the election of the Attorney General, such elections
23 are held pursuant to Guam law. 48 U.S.C. § 1421g(d)(2). Guam law specifies the qualifications
24 of the Attorney General, 5 GCA § 30101, and outlines his powers and duties. 5 GCA §§ 30102
25 & 30103. The Guam Legislature may modify the Attorney General’s common law powers. *A.B.*
26 *Won Pat Guam Int’l Airport Auth. v. Moylan*, 2005 Guam 5 ¶¶ 2, 62. Guam law provides that the
27 Attorney General has “cognizance of all legal matters, excluding the Legislative and Judicial
28 Branches of the government of Guam, involving the Executive Branch of the government of
29 Guam, its agencies, instrumentalities, public corporations, autonomous agencies and the Mayors
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1 Council". 5 GCA § 30103. The Attorney General does not have cognizance of legal matters
2 involving the United States government. He is not a federal officer and section 1442 does not
3 apply to him as such.
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5 Second, the Attorney General is not acting under a United States officer. In order for a
6 local official to qualify as a United States officer for purposes of removal, he must show that he
7 acts under a United States officer. 28 U.S.C. § 1442(a)(1). This requires the local official to show
8 a causal nexus between his actions, taken pursuant to directions from a federal officer, and the
9 petitioner's claims. *DeFiore*, 85 F.4th at 553. Acting under a federal officer means carrying out
10 federal tasks. If a Guam official is closely supervised by a federal officer and the Guam official's
11 actions are necessary to fulfill federal tasks, the Guam official may meet the statutory
12 requirements for federal officer removal.
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16 In this case, the Attorney General has been asked to undertake his duties under the
17 procurement review process pursuant to precedent set by the Guam Supreme Court in *In re Leon*
18 *Guerrero*, 2024 Guam 18, the Guam Procurement Law, 5 GCA § 5150, and Rule 1.7 of the Guam
19 Rules of Professional Conduct governing conflicts of interest. The mere fact that federal funds
20 will pay for the procurement at issue here does not transform the Attorney General's procurement
21 review duties into a federal task. If that were the case, then every state and local official with
22 access to or oversight of federal funding would be a federal officer.
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26 Although courts normally liberally construe the removal statute to protect federal officers
27 and those assisting them from interference by state courts, *Fidelitad, Inc. v. Insitu, Inc.*, 904 F.3d
28 1095, 1099 (9th Cir. 2018), the instant case warrants no such construction. Here, the project
29 funding source has no ability to make the Attorney General a federal officer. No federal officer is
30 supervising the Attorney General or directing his activities. The dictates of Guam case law,
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