

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Judge Philip A. Brimmer**

Civil Action No. 10-cv-00868-PAB-CBS

MARIA GALLARDO and  
D.R.G., a minor child by and through  
her natural mother and next best friend, MARIA GALLARDO,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

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**ORDER**

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This matter comes before me on Plaintiff's Motion to Recuse [Docket No. 154]. At the trial preparation conference on March 16, 2012, I informed the parties that one of the government's listed expert witnesses was currently acting as a physician for my wife. I asked the parties to file any motions for recusal based on that disclosure by March 23. On March 20, 2012, plaintiffs filed their motion to recuse pursuant to 28 U.S.C. § 455 and *Liteky v. United States*, 510 U.S. 540 (1994), based both on actual bias and on an appearance of bias. Specifically, plaintiffs believe that I would give greater weight and credibility to the opinions of that witness or that there would be an appearance that I would do so.

On March 22, the United States filed a response to the plaintiffs' motion indicating that it is no longer intending to call that witness at trial and that the plaintiffs' recusal motion is therefore moot. Given that the plaintiffs' motion is predicated on that

witness testifying at trial and given that the witness will no longer be testifying, the Court agrees that the asserted grounds for recusal no longer exist. Moreover, there is no suggestion from either side that the witness' opinions would otherwise be introduced at trial. Therefore, it is

ORDERED that the Plaintiffs' Motion to Recuse [Docket No. 154] is denied as moot.

DATED March 23, 2012.

BY THE COURT:

s/Philip A. Brimmer  
PHILIP A. BRIMMER  
United States District Judge