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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **EASTERN DIVISION**

14 UNITED STATES OF AMERICA,  
15 Plaintiff,  
16 v.  
17 JOSE MARGARITO PLIEGO-PINEDA,  
18 Defendant.

Case No. 5:25-CR-00089-RGK

**EMERGENCY MOTION FOR  
RELEASE FROM IMMIGRATION  
CUSTODY OR OTHER REMEDIES**

19 Defendant Jose Margarito Pliego-Pineda (“Mr. Pliego-Pineda”), by and through  
20 counsel of record, Deputy Federal Public Defenders Chad Pennington, Ayah Sarsour,  
21 and Mitchell M. Suliman, respectfully moves for an emergency order directing Mr.  
22 Pliego-Pineda’s immediate release from federal custody or a dismissal of the matter with  
23 prejudice. As set forth below, effective this morning, the government placed Mr. Pliego-  
24 Pineda into immigration custody on the eve of trial in violation of the Magistrate Judge’s  
25 release order in this proceeding and in contravention of the United States Constitution.  
26 Mr. Pliego-Pineda maintains his right to be present at trial in person under the  
27 Constitution and Federal Rule of Criminal Procedure 43.

**I.BACKGROUND**

1  
2 This matter is set for an imminent jury trial setting on February 24, 2026 – three  
3 days from today. The parties are far past the motions deadline. In preparation for trial,  
4 defense counsel had scheduled multiple trial preparation sessions with Mr. Pliego-  
5 Pineda, interpreter sessions to facilitate communication, and final sessions to review  
6 discovery, discuss potential testimony, prepare for cross-examination of government  
7 witnesses, and finalize trial strategy. This final trial preparation is a continuation of the  
8 defense’s long-standing and timely trial preparations. That preparation is lost, or at the  
9 very least imperiled, because the government, effective today, placed Mr. Pliego-Pineda  
10 into immigration custody for the expressed purpose of his expedited removal from the  
11 United States. The defense received no advance notice from the government that it  
12 intended to place Mr. Pliego-Pineda into immigration custody, and as noted in the  
13 attached declaration, the arresting federal agents were aware of the impending trial date.

14 With Mr. Pliego-Pineda’s placement into immigration custody, the defense team  
15 has no knowledge of his current location; it has no means of communicating with him,  
16 and it cannot engage in rudimentary trial preparations with Mr. Pliego-Pineda. In effect,  
17 the defense cannot prepare for trial on the eve of trial.

18 As noted above, Mr. Pliego-Pineda has not waived, nor will waive, his appearance  
19 rights under Federal Rule of Criminal Procedure 43. He expects to be present at the  
20 February 24, 2026, trial. He asks that the Court order his immediate release from federal  
21 custody or dismiss this matter with prejudice.

22 \*\*\*

23 On the morning of Saturday, February 21, 2026, at approximately 8:56 a.m.,  
24 defense counsel Ayah Sarsour received an urgent call from Mr. Pliego-Pineda’s family  
25 informing her that federal agents took Mr. Pliego-Pineda into immigration custody that  
26 morning following a vehicle stop in San Jacinto, California. Family members reported  
27 that several agents stopped the vehicle, approached both sides, asked Mr. Pliego-Pineda  
28 to identify himself in Spanish, and immediately detained him while he was seated in the

1 passenger seat. When family members asked whether agents had a warrant, agents stated  
2 that they did but did not provide any paperwork before removing Mr. Pliego-Pineda from  
3 the scene. Consistent with the sworn attached declaration, multiple agents and several  
4 SUVs were present, ICE agents acknowledged awareness of Mr. Pliego-Pineda's  
5 upcoming February 24, 2026, criminal trial, but proceeded with his arrest and detention,  
6 and he was transported to an immigration detention facility that remains unknown. *See*  
7 Decl. of Marina Morales Santiago ¶¶ 3–11 (Feb. 21, 2026) (on file with the Court, filed  
8 simultaneously).

9       Shortly thereafter, family members received a brief telephone call from a detention  
10 facility number. During that call, Mr. Pliego-Pineda was only able to convey that he had  
11 been arrested by ICE and that federal authorities were attempting to expedite his removal  
12 from the United States. *See generally id.* ¶¶ 12–14 (Feb. 21, 2026). Mr. Pliego-Pineda  
13 indicated to his family that he had not signed paperwork consenting to removal, before  
14 the call was disconnected. *See generally id.* Subsequent attempts to determine his  
15 location were unsuccessful.

16       With Mr. Pliego-Pineda's federal custody on the eve of trial, defense counsel is  
17 now unable to communicate with him, prepare him for testimony, or review evidence  
18 with him; he in turn has been deprived of an opportunity to meaningfully participate in  
19 trial preparation or consult with his defense team.

20       Mr. Pliego-Pineda has been released pretrial for nearly a year in this matter. The  
21 government's elective decision to place him into federal, immigration custody now has  
22 invaded the heartland of Mr. Pliego-Pineda's constitutional fair trial rights --- the right  
23 to counsel and to participate in his defense. And it bears repeating, the government made  
24 the elective decision to place him in immigration custody on the eve of trial despite  
25 arresting agents' awareness of the upcoming trial date. *See generally id.* The  
26 government's interference has directly disrupted scheduled trial preparation sessions and  
27 has prevented counsel from fulfilling their constitutional obligation to provide effective  
28 assistance of counsel.



1 authority, in a situation in which the [g]overnment has chosen to engage in both removal  
2 proceedings and criminal proceedings against a noncitizen defendant, to craft an  
3 appropriate remedy, such as dismissing the indictment.” *United States v. Zambrano*, 23-  
4 CR-524-DMG-5, ECF No. 663, p. 4 (C.D. Cal. Feb. 5, 2026) (internal citation omitted).  
5 Indeed, the overwhelming majority of cases provide that the “Executive Branch must  
6 choose between taking noncitizen[s] into custody for the purpose of removing and  
7 deporting that individual or temporarily declining to do so while criminal proceedings  
8 are maintained against that person.” *Id.*; *see also United States v. Parias*, No. CR 25-  
9 00904-FMO, 2025 WL 3749406 (C.D. Cal. Dec. 27, 2025) (authorizing dismissal with  
10 prejudice of an indictment where the defendant’s placement into immigration custody  
11 impaired his trial preparation rights). The Court here should order Mr. Pliedo-Pineda’s  
12 immediate release from immigration custody or dismiss this matter with prejudice.

13 Indeed, district courts have routinely imposed dismissal with prejudice where  
14 immigration custody prevented communication with counsel, interfered with trial  
15 preparation, or removed the defendant from the court’s jurisdiction. *See United States v.*  
16 *Lutz*, 2019 WL 5892827 (D. Ariz. Nov. 12, 2019); *United States v. Boutin*, 269 F. Supp.  
17 3d 24, 27–29 (E.D.N.Y. 2017) (giving the government the choice between releasing the  
18 defendant from immigration custody or having the indictment dismissed with prejudice  
19 where it was clear to the court that the government was “well aware that the defendant  
20 would be taken into ICE custody once he met the bail conditions” and the Court was  
21 “powerless to affect any immigration proceedings.”).

22 To that end, where, as here, a defendant has been ordered released under the Bail  
23 Reform Act following a detention hearing, the government may elect to proceed with  
24 immigration enforcement or criminal prosecution, but it may not do both in a manner  
25 that subverts a judicial release order in the criminal proceeding or undermines the  
26 defendant’s criminal trial rights. Applying *Santos-Flores*, the black letter law in this  
27 Circuit is when the government prioritizes removal, it may abandon the criminal  
28

1 prosecution; however, if it chooses to pursue the criminal case, it must honor the release  
2 order and permit the defendant to participate in the proceedings. 794 F.3d at 1091.

3 In light of *Santos-Flores* and the numerous district court decisions applying it, the  
4 government may not use immigration detention to circumvent a judicial release order *or*  
5 impair the defendant's ability to prepare for trial. Any remedy short of enforcing the Bail  
6 Reform Act and the Court's release order would permit the government to disregard  
7 controlling authority and numerous court directives, including this Court's scheduling  
8 order.

### 9 III.ARGUMENT

#### 10 A. ICE's Detention Subverts the Court's Pretrial Release Order

11 Instead of seeking review under 18 U.S.C. § 3145 or moving for reconsideration  
12 of pretrial release, the government placed Mr. Pliego-Pineda into immigration custody  
13 days before trial. This action nullifies the Court's release order without judicial review.

14 In this case, a United States Magistrate Judge determined under the Bail Reform  
15 Act that Mr. Pliego-Pineda could remain at liberty pending trial. That determination  
16 reflects a judicial finding that detention was not warranted to assure appearance or protect  
17 the community. The release order additionally protects Mr. Pliego-Pineda's trial rights.  
18 For example, the release order, critically, allows Mr. Pliego-Pineda to freely and without  
19 interference, communicate with counsel during the essential period preceding the trial  
20 setting. The government's wholly elective decision to place him into immigration custody  
21 has now deprived him of his right to counsel. Indeed, Mr. Pliego-Pineda was released  
22 hours ago. His placement into immigration custody renders him subject to far greater  
23 restrictions on his liberty and consequently access to counsel and capacity to prepare for  
24 trial, than he was a mere few hours ago. Indeed, a few hours ago, the defense team knew  
25 where the Client resided; now, it does not know his physical location.

1 **B. The government's placement of Mr. Pliego-Pineda into custody on the**  
2 **eve of trial interferes with his trial rights and preparations.**

3 The government's placement of Mr. Pliego-Pineda into immigration custody three  
4 days before trial, and one business day before trial, is a targeted disruption of his right to  
5 trial. He has been released for nearly a year pretrial in this proceeding. The defense has  
6 spent considerable effort preparing for this trial with the expectation Mr. Pliego-Pineda  
7 would remain released pretrial consistent with the Magistrate Judge's pretrial release  
8 order. Instead, on a weekend, days before trial, the government proceeded with a hasty  
9 placement of Mr. Pliego-Pineda into immigration custody and beyond a reasonable  
10 ability to competently prepare for trial with counsel. Defense received no notice of any  
11 kind that the government, now, would take him into immigration custody.

12 As a result, defense counsel cannot meet with him, review discovery, prepare  
13 testimony, or finalize strategy. Courts consistently recognize that immigration detention  
14 that prevents meaningful consultation with counsel threatens both due process and the  
15 right to effective assistance of counsel, warranting dismissal with prejudice. *Santos-*  
16 *Flores*, 794 F.3d at 1091; *Trujillo-Alvarez*, 900 F. Supp. 2d at 1180. Indeed, two Courts  
17 within this District have concluded dismissal with prejudice is the only just and  
18 appropriate sanction for the government's interference to the criminal proceeding and its  
19 abusive practice of subjecting a criminal defendant to a detention hearing too only later  
20 place that person into immigration custody during the critical stages of trial preparation.  
21 *See Zambrano*, 23-CR-524-DMG-5, ECF No. 663, p. 4; *see also Parias*, No. CR 25-  
22 00904-FMO, 2025 WL 3749406.

23 **C. If not released now, dismissal with prejudice is the appropriate remedy**

24 If Mr. Pliego-Pineda is not released forthwith from federal custody, no other  
25 remedy suffices. The government's conduct here should be carefully scrutinized by the  
26 Court. It placed Mr. Pliego-Pineda into immigration custody days before trial, almost a  
27 year after he has been released without notice. Indeed, as set forth in the attached  
28 declaration, the arresting government agents were plainly aware of Mr. Pliego-Pineda's

1 Tuesday trial. The government has thus not only violated the pretrial release order, but it  
2 violated the release order and the very time and for the very purpose for which the release  
3 order exists – so that Mr. Pliego-Pineda may receive a fair trial and participate in his  
4 defense without unneeded restrictions to his liberty. Mr. Pliego- Pineda must not be  
5 subject to greater restrictions on his trial preparations in this proceeding than a Magistrate  
6 Judge has already concluded he cannot be subjected to. The government agents  
7 proceeded with arrest knowing of the trial date. The government cannot receive the  
8 benefit of the very disruption it provoked.

9 If not released, a lesser remedy, dismissal without prejudice, permits the  
10 government to benefit from its conduct and refile later. The prejudice is immediate and  
11 irreparable: trial preparation has been disrupted, counsel cannot communicate with the  
12 client, and removal remains imminent. The government’s conduct at issue here should  
13 concern the Court because it strikes at the core of the constitutional structure. A criminal  
14 prosecution cannot be reconciled with knowing actions of government actors that prevent  
15 the accused from speaking with counsel, preparing for trial, and exercising the right to  
16 have a jury decide his case. The integrity of the proceeding depends on those guarantees  
17 being real, not theoretical. If not released, only dismissal with prejudice vindicates those  
18 tangible and indispensable rights.

19 Dismissal with prejudice is a severe sanction and warranted where the government  
20 conduct, such as the extreme government conduct here, undermines the integrity of the  
21 proceedings or renders the defendant unable to participate in his defense. *See United*  
22 *States v. Chapman*, 524 F.3d 1073, 1085 (9th Cir. 2008). Courts have emphasized that  
23 dismissal without prejudice allows the government to benefit from its own misconduct  
24 and fails to cure the constitutional harm. *Boutin*, 269 F. Supp. 3d at 29; *Trujillo-Alvarez*,  
25 900 F. Supp. 2d at 1180. They have also noted that dismissal without prejudice would  
26 essentially allow the government to have it both ways and would frustrate the purpose of  
27 the dismissal “to force the Government to make a choice.” *Boutin*, 269 F. Supp. 3d at 29;  
28 *see also Trujillo-Alvarez*, 900 F. Supp. 2d at 1180 (ruling the Court would dismiss the

1 pending charges with prejudice if the defendant was not released because trial was  
2 scheduled *the next month* (not days before like here)). The Court here too should avoid  
3 that incongruity and order release now or dismissal with prejudice. The government’s  
4 eleventh-hour immigration arrest should foreclose future prosecution against Mr. Pliego-  
5 Pineda.<sup>1</sup>

6 **IV.CONCLUSION**

7 Mr. Pliego-Pineda urges the Court to order his release from immigration custody  
8 forthwith or dismiss this matter with prejudice as a sanction for the government's  
9 placement of him into immigration custody, impairing his right to a fair trial.

10 Respectfully submitted,

11 CUAUHTEMOC ORTEGA  
12 Federal Public Defender

13 DATED: February 21, 2026

14 By /s/ Chad Pennington  
15 CHAD PENNINGTON  
16 AYAH A. SARSOOR  
17 MITCHELL M. SULIMAN  
18 Attorneys for MR. PLIEGO-PINEDA

19 **CERTIFICATE OF COMPLIANCE**

20 I, Chad Pennington, counsel of record for the defendant, certify that this filing  
21 complies with the requirement of L.R. 11-6.1. The defense has conferred with the  
22 government and provided the government notice of the instant motion on the morning of  
23 February 21, 2026, pursuant to the Local Rules.  
24

25 \_\_\_\_\_  
26 <sup>1</sup> The executive branch in this matter is one whole, the government cannot evade  
27 responsibility here because of the conduct of ICE agents. It is axiomatic, as with its  
28 discovery obligations, the responsibility “of the Justice Department cannot be evaded by  
claiming lack of control over the files or procedures of other executive branch agencies.”  
*United States v. Safavian*, 233 F.R.D. 12, 15 (D.D.C. 2005) (citing *United States v.*  
*Jennings*, 960 F.2d 1488, 1490 (9th Cir.1992)).