

1 CUAUHTEMOC ORTEGA (Bar No. 257443)
Federal Public Defender
2 AYAH A. SARSOOR (Bar No. 340280)
(EMail: Ayah_Sarsour@fd.org)
3 Deputy Federal Public Defender
3801 University Avenue, Suite 700
4 Riverside, California 92501
Telephone: (951) 276-6346
5 Facsimile: (951) 276-6368

6 Attorneys for Defendant
JOSEPH BLANDON-SAAVEDRA
7
8

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

13 UNITED STATES OF AMERICA,
14 Plaintiff,
15 v.
16 JOSEPH BLANDON-SAAVEDRA
17 Defendant.
18

Case No. 5:25-cr-00310-KK-1

**NOTICE OF MOTION AND
MOTION TO DISMISS OR FOR
ALTERNATIVE REMEDIES
DUE TO SPOILIATION OF THE
EVIDENCE AND VIOLATION
OF FED. R. CRIM. P. 16;
DECLARATION OF COUNSEL;
EXHIBITS**

Trial: November 17, 2025

**Pretrial Conference: November
6, 2025.**

19
20
21
22 Defendant Joseph Blandon-Saavedra, by and through counsel of record,
23 Deputy Federal Public Defenders, Ayah A. Sarsour and Chad Pennington
24 hereby moves for dismissal of the indictment on the grounds that the: 1)
25 government destroyed or failed to preserve material, exculpatory evidence,
26 or, alternatively, 2) that the government destroyed or failed to preserve
27 potentially useful evidence and did so in the absence of good-faith.

28 This motion is made pursuant to the Due Process Clause of the Fifth
Amendment to the United States Constitution, as well as *Brady v. Maryland*,

1 373 U.S. 83 (1963); *California v. Trombetta*, 467 U.S. 479 (1984); *Arizona v.*
2 *Youngblood*, 488 U.S. 51 (1988), and their progeny.

3 This motion is supported by the accompanying Memorandum of Points
4 and Authorities and the offered exhibits, files, and records in this case, the
5 possible testimony of witnesses called at any hearing, and any additional
6 arguments and evidence that may be presented to the Court during any
7 scheduled hearing on this motion. The defense has provided notice of the
8 motion, and the parties have conferred. *See* Ex. C. As a result, the dispute is
9 ripe for the Court's resolution.

10 Respectfully submitted,

11
12 CUAUHTEMOC ORTEGA
13 Federal Public Defender

14 By s/ Ayah A. Sarsour
15 Ayah Sarsour
16 Deputy Federal Public Defender

17 DATED: October 29, 2025 By s/ Chad Pennington
18 Chad Pennington
19 Deputy Federal Public Defender
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

Page

1 I. PROCEDURAL HISTORY AND BACKGROUND INFORMATION 1
2 II. LEGAL STANDARD..... 6
3 A. Material exculpatory evidence 8
4 B. Potentially useful evidence 8
5 C. The Ninth Circuit is instructive here 9
6 D. Rule 16(a)(1)(e) 10
7 E. Remedies 11
8 III. ARGUMENT 12
9 A. The repaired vehicle was material 12
10 B. The repaired vehicle was potentially useful 14
11 C. The government did not act in good faith. 15
12 D. Rule 16 separately requires dismissal..... 19
13 IV. CONCLUSION..... 20

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Arizona v. Youngblood,
 488 U.S. 51 (1988) *passim*

Brady v. Maryland,
 373 U.S. 83 (1963) *passim*

California v. Trombetta,
 467 U.S. 479 (1984) *passim*

Giglio v. United States,
 405 U.S. 150 (1972) 1, 3, 7

Illinois v. Fisher,
 540 U.S. 544 (2004) 8

Kyles v. Whitley,
 514 U.S. 419 (1995) 7

United States v. Cooper,
 983 F.2d 928 (9th Cir. 1993) *passim*

United States v. Del Toro-Barboza,
 673 F.3d 1136 (9th Cir. 2012) 8

United States v. Flyer,
 633 F.3d 911 (9th Cir. 2011) 11, 16

United States v. Hernandez-Meza,
 720 F.3d 760 (9th Cir. 2013) 11

United States v. Lloyd,
 992 F.2d 348 (D.C. Cir. 1993) 11

United States v. Muniz-Jaquez,
 718 F.3d 1180 (9th Cir. 2013) 11

United States v. Sivilla,
 714 F.3d 1168 (9th Cir. 2013) 12, 16

1 *United States v. Zaragoza-Moreira,*
2 780 F.3d 971 (9th Cir. 2015) *passim*
3 **Federal Statutes**
4 18 U.S.C. § 111(a)(1), (b)..... *passim*
5 Jencks Act (18 U.S.C. § 3500)..... 2

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **I. PROCEDURAL HISTORY AND BACKGROUND**
3 **INFORMATION**

4 Imagine this: the government charges a man with criminally assaulting
5 federal officers with a dangerous weapon, for example with a firearm or a
6 knife. Now imagine those same officers are in-turn accused by the defense of
7 using deadly weapons against the defendant – of also using firearms or
8 knives. Now imagine in that same case, some of the weapons used by the
9 conflicting parties have either been altered, became unavailable for
10 inspection, or disappeared. As unbelievable as that sounds, that is exactly
11 what happened in this case.

12 This is a case about a car collision between Mr. Bandon-Saavedra and
13 immigration officials that the government claims resulted in an assault on
14 federal employees. The damage to the vehicles involved in the collision – their
15 psychological condition and their inspectable damage is of obvious importance to
16 the defense. Indeed, the government seeks enhanced statutory punishment,
17 use of a dangerous weapon, stemming from Mr. Bandon-Saavedra’s use of
18 his car and the contact it had with the government car(s). The evidentiary
19 value of the cars/autos involved in the collision has been known by the
20 government since the beginning of its case. A review of the Complaint
21 illustrates the salience of the collision to the government’s case. *See* ECF No.
22 1, p. 5. Unfortunately, and to Mr. Bandon-Saavedra’s detriment, a
23 government auto involved in the collision (an unmarked Homeland Security
24 vehicle), *see id.*, is no longer available for defense inspection. The vehicle has
25 been repaired. And, the repair occurred before the defense could physically
26 inspect the vehicles. The government’s spoliation of material and useful
27
28

1 evidence warrants dismissal under the Fifth Amendment, Federal Rule of
2 Criminal Procedure 16, and the Court's standing criminal order, Section II.

3 ***

4 On September 5, 2025, the government filed a complaint charging Mr.
5 Bandon with two counts of assaulting a federal officer with a deadly and
6 dangerous weapon, in violation of 18 U.S.C. § 111(a)(1), (b). *See Compl.,*
7 *United States v. Bandon-Saavedra*, No. 5:25-mj-00561-DUTY (C.D. Cal.
8 Sept. 5, 2025), ECF No. 1. The essence of the government's prosecutorial
9 theory is that Mr. Bandon-Saavedra used his vehicle to strike government
10 vehicles during the immigration officials' arrest of Mr. Bandon-Saavedra.
11 Mr. Bandon-Saavedra contests the government's narrative of which vehicle
12 hit which vehicles first, but he now lacks the ability to inspect all of the
13 vehicles involved or present at the scene. Examination of the vehicles
14 involved in the alleged collision is core to the defense's theory to establish
15 reasonable doubt and possibly for use in its case-in-chief. A defense collision
16 expert now cannot review all vehicles in-person, conduct measurements, and
17 conduct a complete analysis of the damage to determine who likely hit who
18 first and under what conditions. Moreover, Mr. Bandon-Saavedra is now at
19 a comparative disadvantage, his car has not been restored, but the
20 government's vehicle has been. In effect, the government can inspect Mr.
21 Bandon-Saavedra's car and invite the jury to make inferences from the
22 damage, Mr. Bandon-Saavedra cannot do the same with the government
23 cars. Unfortunately, the government's repair of its own vehicle before
24 inspection has materially altered the vehicle's state from the time of the
25 alleged collision, and the repaired vehicle will have no use to the defense.

26 ***

1 On September 8, 2025, the defense sent the government a formal
2 discovery demand “pursuant to all court rules, codes, statutes, and case law,
3 including Federal Rules of Criminal Procedure 12, 16, and 26, *Brady v.*
4 *Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972),
5 and the Jencks Act (18 U.S.C. § 3500).” Exhibit A – Letter from Ayah A.
6 Sarsour, Deputy Federal Public Defender, to Courtney N. Williams,
7 Assistant United States Attorney, *Re: United States v. Joseph Bandon-*
8 *Saavedra*. Pursuant to Federal Rule of Criminal Procedure 16(1)(1)(E), the
9 defense specifically requested: “C. All physical evidence pertaining to this
10 case. [The defense] also request[s] an opportunity to inspect, copy, and/or test
11 all tangible objects and buildings or places which the government intends to
12 use in its case-in-chief at trial and/or which *are material to preparation of Mr.*
13 *Bandon-Saavedra’s defense.*” *Id.* at p. 3 (emphasis added).

14 On September 24, 2025, the grand jury returned a true bill against Mr.
15 Bandon-Saavedra; the government charged him with two counts of
16 assaulting, resisting, or impeding a federal officer using a deadly or
17 dangerous weapon, specifically a car, in violation of 18 U.S.C. § 111(a)(1), (b).
18 ECF No. 14.

19 On September 30, 2025, Mr. Bandon-Saavedra appeared for his Post
20 Indictment Arraignment before the Honorable Magistrate Judge David T.
21 Bristow. *See* ECF No. 33. At the hearing, the government was orally advised
22 of the following:

23 Before we proceed, I will advise the Government of their
24 obligations under federal law, including Rule 5(f) of the Federal
25 Rules of Criminal Procedure, as well as pursuant to the case of
26 *Brady v. Maryland*, which is found at 373 United States Reports,
27 Page 83, from the year 1963, along with all of the subsequent case
28

1 law interpreting the *Brady* decision. Pursuant to these
2 authorities, the Government has a continuing obligation to
3 produce all information or evidence known to the Government
4 that is relevant to the guilt or punishment of a defendant,
5 including but not limited to exculpatory evidence. Accordingly,
6 the Court orders the Government to produce to the Defendant in
7 a timely manner all information or evidence known to the
8 Government that is either, one, relevant to the Defendant's guilt
9 or punishment or, two, favorable to the Defendant on the issue of
10 guilt or punishment. This order is entered pursuant to Rule 5(f)
11 and does not relieve any party in this action of any other discovery
12 obligation. The consequences for violating either this order or the
13 Government's obligation under *Brady* include but are not limited
14 to the following: Contempt, sanction, referral to a disciplinary
15 authority, adverse jury instruction, exclusion of evidence, and/or
16 the dismissal of charges.

17 ECF No. 18, Transcript of Post-Indictment Arraignment Before the
18 Honorable David T. Bristow, *United States v. Blandon-Saavedra*, No. ED CR
19 25-310-KK (C.D. Cal. Sept. 30, 2025), filed Oct. 7, 2025. The Court's standing
20 criminal order, Section II, contains similar language regarding defense
21 access to material, exculpatory evidence.

22 On October 1, 2025, twenty-three days after requested, the government
23 produced its first, and only, production of discovery. Exhibit B – Letter from
24 Courtney N. Williams, Assistant United States Attorney, to Ayah Sarsour,
25 Federal Public Defender's Office, Re: *United States v. Joseph Blandon-*
26 *Saavedra*, No. ED CR 25-310-KK (C.D. Cal. Oct. 1, 2025). The government
27 provided a letter that corresponded with the production. The letter stated:
28

1 Dear Ms. Sarsour:

2 Pursuant to your request for discovery please find the following:

- 3
- Reports (USAO_001-USAO_0037);
 - Instagram Video (USAO_0038);
 - Defendant Statement (USAO_0039);
- 4

5 *The government will make available for your inspection any item*
6 *of evidence referred to above, as well as any other evidence seized*
7 *from your client and/or which the government intends to offer in*
8 *its case-in-chief. Please contact me to arrange a mutually*
9 *convenient time for your inspection of such items.*

10 *Id.* (emphasis added). The damaged vehicles were referred to in the discovery
11 production.

12 On the morning of October 27, 2025, at 10:21 a.m., defense counsel
13 Ayah A. Sarsour, after having the first opportunity to meet with Mr.
14 Blandon-Saavedra with investigator Elizabeth Aguilar of the Office of the
15 Federal Public Defender for the Central District of California, emailed the
16 government to request the dates and times during that week when the
17 defense could conduct an inspection of all vehicles present at the scene,
18 accompanied by the defense investigator. *See* Exhibit C, Email Chain
19 Between Defense Counsel and the Government Regarding Inspection of
20 Vehicles. At 10:27 am, the government responded, informing the defense it
21 would contact its agent, “and [the agent] said he needs to first find out where
22 the vehicles are located. He is making some calls about it. I should have an
23 answer to you no later than tomorrow morning.” *Id.* No mention of a vehicle
24 repair was included.

25 On October 28, 2025, at 12:29 p.m., defense counsel Chad Pennington
26 emailed the government for a status update. *Id.* At 12:34 p.m., the
27 government responded and advised the defense of the following:
28 “My agent said that the vehicles are located in San Bernardino. He said that

1 you can visit them at 10:30 a.m. on Thursday at the earliest. I am waiting for
2 the address of the location. The location does require that you send a copy of
3 your driver's license before visiting. *Lastly, the agent said that one of the*
4 *vehicles has been repaired. But you can look at both cars if you'd like.*

5 *Id.* (emphasis added).

6 Defense counsel Pennington responded that the defense's understanding
7 is there were four vehicles involved in this incident, the defense needed to
8 inspect all vehicles, and inquired when were the repairs on the repaired
9 vehicle completed. *Id.* The government responded the following:

10 There was one HSI vehicle hit and one ERO vehicle that was
11 hit. Then the defendant's vehicle was part of the crash.
12 That's it. The HSI vehicle and the ERO vehicle are located
13 at 655 West Rialto Avenue, San Bernardino, 92410. The
14 ERO building. *The HSI vehicle was repaired. They wrapped*
15 *up the repairs on the vehicle yesterday.*

16 *Id.* (emphasis added).

17 Because the vehicle at issue is both material, exculpatory evidence and,
18 at minimum, potentially useful evidence destroyed in the absence of good-
19 faith, the defense respectfully request this Court to dismiss the indictment
20 with prejudice pursuant to controlling constitutional principles, governing
21 precedent, and applicable rules of criminal procedure.

22 **II.LEGAL STANDARD**

23 “[C]riminal prosecutions must comport with prevailing notions of
24 fundamental fairness. We have long interpreted this standard of fairness to
25 require that criminal defendants be afforded a meaningful opportunity to
26 present a complete defense.” *California v. Trombetta*, 467 U.S. 479, 485
27 (1984). In addition to the government's obligations to disclose favorable or

1 impeachment evidence under *Brady* and *Giglio*, the Supreme Court in
2 *Trombetta* held that to protect a defendant’s right to present a complete
3 defense, due process is violated, and a defendant is entitled to a remedy,
4 when the government destroys or fails to preserve evidence. 467 U.S. at 489.
5 Evidence that the government fails to preserve falls into two remedial
6 categories: (1) material exculpatory evidence and (2) potentially useful
7 evidence. *See Arizona v. Youngblood*, 488 U.S. 51, 57–58 (1988). Under the
8 *Trombetta* standard, material exculpatory evidence is such destroyed
9 “evidence that possess[es] an exculpatory value that was apparent before the
10 evidence was destroyed” and is “of such a nature that the defendant would
11 be unable to obtain comparable evidence by other reasonably available
12 means.” *Trombetta*, 467 U.S. at 489; *see also United States v. Cooper*, 983
13 F.2d 928, 931 (9th Cir. 1993) (quoting *Trombetta*, 467 U.S. at 489) (cleaned
14 up). “Potentially useful evidence,” on the other hand, is “evidentiary material
15 of which no more can be said than that it could have been subjected to tests,
16 the results of which might have exonerated the defendant.”¹ *United States v.*
17 *Zaragoza-Moreira*, 780 F.3d 971, 978 (9th Cir. 2015).

18 _____
19 ¹ Because they are Constitutional obligations, *Brady* evidence must
20 be disclosed regardless of whether the defendant makes a request for
21 exculpatory or impeachment evidence. *Kyles v. Whitley*, 514 U.S. 419, 432-
22 33 (1995). Indeed, it is true, and has always been true that Mr. Blandon-
23 Saavedra is:

24 [E]ntitled to a speedy and public trial by jury. The
25 right to a jury trial can be waived. [He is] entitled to
26 see and hear the evidence and cross-examine the
27 witnesses against [him]. [He is] entitled to the
28

1 **A. Material exculpatory evidence**

2 Critically, the Supreme Court has said that “when the State suppresses
3 or fails to disclose material exculpatory evidence, the good or bad faith of the
4 prosecution is irrelevant: a due process violation occurs whenever such
5 evidence is withheld.” *United States v. Del Toro-Barboza*, 673 F.3d 1136, 1149
6 (9th Cir. 2012). The harm is loss of evidence, not the government’s intent in
7 the loss. The standard for whether evidence is “material exculpatory” under
8 derives from *Brady*. See *Illinois v. Fisher*, 540 U.S. 544, 548 (2004)
9 (explaining in the context of a *Youngblood* motion that a due process violation
10 occurs whenever “the State suppresses or fails to disclose material
11 exculpatory evidence” under *Brady*, regardless of good or bad faith). As noted
12 above: “To meet this standard of constitutional materiality, evidence must
13 both possess an exculpatory value that was apparent before the evidence was
14 destroyed, and be of such a nature that the defendant would be unable to
15 obtain comparable evidence by other reasonably available means.”
16 *Trombetta*, 467 U.S. at 489.

17 **B. Potentially useful evidence**

18 Even if the Court determines that the *Trombetta* material, exculpatory
19 standard was not met, the circumstances of this case satisfy the due process
20

21 processes of the Court to subpoena witnesses on [his]
22 behalf without cost to [him] if [he is] indigent. [He]
23 do[es] not have to prove [his] innocence. The
24 prosecution has the burden to prove [his] guilt beyond
25 a reasonable doubt.

26 ECF No. 7, *Advisement of Defendant’s Statutory and Constitutional*
27 *Rights*, Form CR-10, (C.D. Cal.) (emphasis added).

1 violation standard set forth in *Youngblood*, 488 U.S. at 58. “Potentially useful
2 evidence,” on the other hand, is “evidentiary material of which no more can
3 be said then that it could have been subjected to tests, the results of which
4 might have exonerated the defendant.” *Zaragoza-Moreira*, 780 F.3d at 978.
5 Useful evidence, unlike material evidence, is subject to good-faith balancing.
6 *See Cooper*, 983 F.2d at 931; *see also Youngblood*, 488 U.S. at 58.

7 In this context, “bad faith” means that “the police themselves by their
8 conduct indicate that the evidence could form a basis for exonerating the
9 defendant.” *Id.* at 58. Bad faith exists when a member of the prosecution
10 team fails to preserve evidence while subjectively aware that the evidence
11 was “potentially useful” to the defense. *Id.*

12 **C. The Ninth Circuit is instructive here**

13 In *Zaragoza-Moreira*, the defendant was detained by law enforcement
14 as she crossed the Mexico–United States border. 780 F.3d at 978. She was
15 charged by complaint on December 23, 2011, with importing heroin and
16 methamphetamine into the United States. *Id.* Five days later, on December
17 28, 2011, defense counsel submitted a discovery and preservation of evidence
18 request to the prosecution, expressly stating that “defendant specifically
19 requests that any and all videotapes ... that may be destroyed, lost, or
20 otherwise put out of the possession, custody, or care of the government and
21 which relate to the arrest or the events leadings to the arrest [of Zaragoza-
22 Moreira] in this case be preserved.” *Id.*

23 Approximately two months later, on February 23, 2012, defense counsel
24 filed a motion to compel discovery and preserve evidence, which the district
25 court granted on February 27, 2012. *Id.* at 976–77. The following day, defense
26 counsel specifically requested the Port of Entry surveillance footage from the
27 date of Zaragoza-Moreira’s arrest, December 22, 2011. *Id.* at 977. U.S.

1 Customs and Border Protection subsequently informed the prosecution that
2 the video footage had been destroyed around January 21, 2012, after being
3 automatically recorded over within thirty to forty-five days of Zaragoza-
4 Moreira’s arrest. *Id.*

5 The district court denied the defense’s motion to dismiss the indictment
6 for destruction of evidence under *Trombetta* and *Youngblood*. On appeal, the
7 Ninth Circuit reversed, holding that the lower court erred in finding no due
8 process violation. The district court had determined that the destroyed
9 footage was not exculpatory but merely potentially useful and therefore
10 analyzed the issue under *Youngblood*’s bad faith standard, concluding that
11 the exculpatory value of the footage “was not readily apparent” to law
12 enforcement. 780 F.3d at 977. The Ninth Circuit disagreed, emphasizing that
13 the district court failed to consider “the [prosecution]’s actions, or lack
14 thereof, in light of the December 28, 2011, letter from defense counsel
15 requesting the preservation of video evidence.” *Id.* at 978. The appellate court
16 held that “[t]he district court ... clearly erred in finding that the exculpatory
17 value of the video footage ... was not readily apparent” to law enforcement.
18 *Id.*

19 **D. Rule 16(a)(1)(e)**

20 (E) Documents and Objects. Upon a defendant’s request, the
21 government must permit the defendant to inspect and to copy or
22 photograph books, papers, documents, data, photographs,
23 tangible objects, buildings or places, or copies or portions of any
24 of these items, if the item is within the government’s possession,
25 custody, or control and:

26 (i) the item is material to preparing the defense;

1 (ii) the government intends to use the item in its case-in-chief at
2 trial.

3 “Materiality” in the Rule 16 pretrial context is broader than the *Brady*
4 “materiality” standard at trial because “[i]nformation that is not exculpatory
5 or impeaching may still be relevant to developing a possible defense.” *United*
6 *States v. Muniz-Jaquez*, 718 F.3d 1180, 1183 (9th Cir. 2013). Indeed, the
7 Ninth Circuit has held that Rule 16 “materiality” is a “low threshold; it is
8 satisfied so long as the information . . . would have helped” to prepare a
9 defense. *United States v. Hernandez-Meza*, 720 F.3d 760, 768 (9th Cir. 2013)
10 (citation and internal quotation marks omitted); *see also United States v.*
11 *Lloyd*, 992 F.2d 348, 351 (D.C. Cir. 1993) (“This materiality standard
12 normally is not a heavy burden; rather, evidence is material as long as there
13 is a strong indication that it will play an important role in uncovering
14 admissible evidence, aiding witness preparation, corroborating testimony, or
15 assisting impeachment or rebuttal.”).

16 **E. Remedies**

17 A wide array of remedies and sanctions are available when the
18 government fails to preserve either material exculpatory evidence or
19 potentially useful evidence, up to and including dismissal of the indictment.
20 *See Zaragoza-Moreira*, 780 F.3d at 982 (reversing and instructing the district
21 court to dismiss the indictment for the government’s failure to preserve
22 potentially useful surveillance footage); *Cooper*, 983 F.2d at 933 (affirming
23 district court’s dismissal of an indictment for failure to preserve potentially
24 useful evidence). Even if a court determines that the evidence was destroyed
25 “under circumstances that do not violate a defendant’s constitutional rights,”
26 sanctions may still be imposed, “including suppression of secondary
27 evidence.” *United States v. Flyer*, 633 F.3d 911, 916 (9th Cir. 2011). In
28

1 deciding what sanctions are appropriate, a court “must balance the quality
2 of the Government’s conduct and the degree of prejudice to the accused.” *Id.*
3 This balancing test requires consideration of several factors, including
4 “whether the evidence was lost or destroyed while in [the government’s]
5 custody, whether the Government acted in disregard for the interests of the
6 accused, [and] whether it was negligent in failing to adhere to established
7 and reasonable standards of care for police and prosecutorial functions.”
8 *United States v. Sivilla*, 714 F.3d 1168, 1173 (9th Cir. 2013) (cleaned up).
9 Where the acts were deliberate, courts also consider “whether they were
10 taken in good faith or with reasonable justification.” *Id.*

11 In evaluating prejudice to the accused, courts consider “the centrality of
12 the evidence to the case and its importance in establishing the elements of
13 the crime or the motive or intent of the defendant; the probative value and
14 reliability of the secondary or substitute evidence; the nature and probable
15 weight of factual inferences or other demonstrations and kinds of proof
16 allegedly lost to the accused; [and] the probable effect on the jury from the
17 absence of the evidence, including dangers of unfounded speculation and bias
18 that might result to the defendant if adequate presentation of the case
19 requires explanation about the missing evidence.” *Id.* at 1173–74.

20 **III.ARGUMENT**

21 **A. The repaired vehicle was material**

22 The repaired vehicle is an immigration vehicle. It was involved in the
23 alleged assault, the auto collision at issue. The government will no doubt
24 attempt to present evidence at trial that Mr. Bandon-Saavedra struck the
25 now repaired vehicle with his vehicle willfully with an intent to assault.
26 Suffice to say, Mr. Bandon-Saavedra disputes the government’s narrative
27 regarding who struck whose vehicle. The repaired government vehicle’s
28

1 materiality is obvious and plain. The state of the vehicles at issue – the
2 damage – offers evidence into whether it was Mr. Bandon-Saavedra that
3 initiated contact, or whether he was struck first. The state of the damage
4 provides evidence at the likely rate of speed Mr. Bandon-Saavedra was
5 driving, and conversely, the repaired vehicle as well.

6 For example, because the repaired government vehicle is no longer in the
7 state it was from the time of the accident, it cannot now be inspected or
8 reviewed by the defense or by a defense collision expert. The defense can no
9 longer obtain an independent assessment of the vehicle's damage or whether
10 the damage suggests it was the government vehicle that struck Mr. Bandon-
11 Saavedra first. The government's claim is that Mr. Bandon-Saavedra
12 initiated contact, but because of a careless repair, the defense now cannot
13 have an expert review all the cars in the accident to determine whether the
14 unaltered damage supports the differing defense view regarding the
15 collision's causation. If the government vehicle had struck Mr. Bandon-
16 Saavedra's vehicle first, that would potentially defeat an essential element
17 on the assault charge – whether he acted willfully. If the government vehicle
18 had struck Mr. Bandon-Saavedra's first or initiated the contact, the
19 government's narrative is less credible and subject to critical reasonable
20 doubt. And, if it was the government vehicle that initiated the contact, then
21 the government's claim that Mr. Bandon-Saavedra acted with a dangerous
22 weapon is cast into doubt. Indeed, physical inspection of the very vehicles
23 involved in the assault could have been used to establish that Mr. Bandon-
24 Saavedra was the victim of a dangerous weapon and his responding actions
25 proportional to the government inducted threat, attack rather than
26 committing an assault. That opportunity is lost. The unrepaired government
27
28

1 vehicle contained material, probative evidentiary value and, at a minimum,
2 potentially exculpatory.

3 The vehicle at issue is not merely incidental to the government’s case;
4 it is the core, the alleged “deadly or dangerous weapons” used by Mr.
5 Bandon-Saavedra forming the foundation of the indictment. The same
6 government vehicles that prosecutors claim were struck by Mr. Bandon-
7 Saavedra were, in fact, the vehicles used by law enforcement agents to box
8 him in, surround him, and force contact and a reckless auto collision. The
9 damage patterns, impact points, and physical condition of all of those vehicles
10 was, therefore, critical to determining whether Mr. Bandon-Saavedra
11 intentionally struck law enforcement officers, as alleged, or whether the
12 contact resulted from the government’s own use of force. The value of the
13 repaired vehicle was plain.

14 Last, the exculpatory value of the government vehicles was readily
15 apparent: the physical damage, or lack thereof, could demonstrate whether
16 the vehicles made contact with Mr. Bandon-Saavedra’s car, the direction and
17 degree of impact, and whether the collisions were caused by government
18 agents rather than the defendant. Once the vehicle was repaired, that critical
19 physical evidence was permanently destroyed, leaving the defense unable to
20 conduct independent inspection, documentation, or alternative testing.
21 Because the vehicle’s original condition could have directly corroborated Mr.
22 Bandon-Saavedra’s version of events, they constitute *material exculpatory*
23 *evidence* under *Trombetta*. The Court can and should stop here without
24 conducting a good-faith analysis and dismiss the indictment.

25 **B. The repaired vehicle was potentially useful**

26 Even if the Court finds that the cars were not materially exculpatory
27 evidence, they are, at the very minimum, *potentially useful* evidence that
28

1 cannot be replicated nor cured because of the government's spoliation.
2 Here, the destroyed or altered government vehicles could have been
3 subjected to physical and forensic inspection to determine causation,
4 velocity, and collision dynamics are all factors directly bearing on intent, a
5 central element of the charged offense. The probative value of the vehicles
6 and their role in the disputed collision, as noted above, is clear even from
7 the government's narrative of the events in the Complaint.

8 **C. The government did not act in good faith**

9 On September 8, 2025, the defense specifically requested that *all*
10 *physical evidence pertaining to this case* be preserved, produced, and
11 available to the defense for inspection. *See* Ex. A. On October 1, 2025, the
12 government produced discovery and indicated that it would make any such
13 evidence available for inspection. The defense never indicated it would not
14 continue to seek inspection of the evidence, the government never (nor could
15 it) stated it would prevent inspection of the physical evidence by a particular
16 date. By repairing the vehicle after offering to make the vehicle available for
17 inspection, the government breached its own production letter terms.

18 The day Mr. Bandon-Saavedra requested inspection of the vehicles
19 (which, was the very first day defense counsel was permitted to meet with
20 him because of the government's placement of him in Adelanto) the
21 government completed repairs of its own vehicle involved in the alleged
22 assault. The repair was negligent if not reckless in relation and proportionate
23 to the needs and issues of this case. If the agents orchestrated the repair on
24 their own, it demonstrates further lack of government care and control in this
25 matter, *e.g.*, a pattern of late filings, late arrivals, and now destruction of
26 evidence.

1 By not following its own agreement to make such evidence available for
2 inspection, the repair demonstrated a lack of proper care and regard for the
3 perseveration of criminal evidence. The government repaired the vehicle
4 nearly two months after the vehicles were in the possession of the
5 government. And nearly two months after the defense had sent out a
6 discovery request. The repair came just two and a half weeks before Mr.
7 Blandon-Saavedra is expected to be tried in federal court where his life,
8 liberty, and even possibly his very status in this country could be impacted.
9 And the repair was completed on the very day inspection was requested, the
10 very first day inspection could be requested given the client availability
11 issues well documented in this case.

12 Here, the government's destruction and alteration of the vehicles that are
13 the central physical evidence in a prosecution alleging use of a "deadly
14 weapon", caused irreparable prejudice to Mr. Blandon-Saavedra. The
15 evidence was destroyed while in government custody, despite the defense's
16 timely discovery request and explicit request for inspection. The loss prevents
17 the defense from conducting independent testing or presenting physical proof
18 to counter the government's narrative. Under the *Flyer* and *Sivilla*
19 framework, these circumstances warrant the most severe sanction available:
20 dismissal of the indictment with prejudice.

21 To that end, no alternative sanction can restore the lost evidence or
22 cure the resulting prejudice. The altered condition of the vehicle eliminates
23 the possibility of independent examination to determine how the collisions
24 occurred and whether law enforcement officers, rather than Mr. Blandon-
25 Saavedra, caused the impact.

26 Without that opportunity, the defense cannot meaningfully contest the
27 government's central theory of intent. This is precisely the type of irreparable
28

1 prejudice that warrants dismissal under *Zaragoza-Moreira*, 780 F.3d at 982,
2 and *Cooper*, 983 F.2d at 933, both of which recognize dismissal as the proper
3 remedy where the government's failure to preserve critical physical evidence
4 undermines the defendant's right to a fair trial. Because no curative
5 instruction, evidentiary sanction, or substitute evidence can restore what has
6 been lost, dismissal with prejudice is the only means of safeguarding due
7 process and preserving the integrity of the judicial process.

8 A dismissal without prejudice would not remedy the harm caused by
9 the government's destruction of the vehicles because the prejudice to Mr.
10 Bandon-Saavedra is permanent and irremediable. The condition of the
11 vehicles, again it bears repeating that this is the very evidence at the center
12 of the government's allegations, can never be restored to its original state.
13 The defense will never be able to examine the vehicles to determine how the
14 collisions occurred, to assess the nature of the damage, or to develop expert
15 testimony rebutting the government's "deadly weapon" theory. Permitting
16 the government to refile the same charges after the physical evidence has
17 been altered would compound, rather than cure, the constitutional violation.
18 The spoliation of this evidence has forever deprived Mr. Bandon-Saavedra
19 of the opportunity to present a complete and fair defense, rendering any
20 future prosecution fundamentally unfair. *See Trombetta*, 467 at 485 (holding
21 that due process requires a meaningful opportunity to present a complete
22 defense). Because the loss of this evidence is irreversible, only dismissal with
23 prejudice can protect Mr. Bandon-Saavedra's due process rights and
24 preserve the integrity of the judicial process.

25 Moreover, the facts and reasoning in *Zaragoza-Moreira* further compels
26 the same result here. As in that case, the defense in this matter made a
27 timely and explicit written request that the government preserve and permit
28

1 inspection of physical evidence central to the prosecution’s theory; namely,
2 the vehicles alleged to be “deadly weapons.” *See* Ex. A. Despite that request,
3 the government allowed the destruction and alteration of the very evidence
4 whose condition would have determined whether Mr. Bandon-Saavedra
5 intentionally assaulted federal officers or whether, instead, agents
6 themselves caused the collision by boxing him in. The government’s
7 confirmation that “they wrapped up the repairs on the vehicle yesterday,” *see*
8 Ex. C, mirrors the conduct condemned in *Zaragoza-Moreira*, where law
9 enforcement destroyed video evidence despite a preservation demand.

10 In fact, the government’s conduct here is even more egregious than that
11 condemned in *Zaragoza-Moreira*. In that case, the destruction of evidence
12 resulted from an automatic recording system that overwrote surveillance
13 footage within thirty to forty-five days of the defendant’s arrest. *Zaragoza-*
14 *Moreira*, 780 F.3d at 971, 977. Here, by contrast, the government had full
15 knowledge of the defense’s preservation request, complete control over the
16 evidence, and ample opportunity to safeguard it. Yet, weeks before trial and
17 nearly two months after the incident, during a federal government shutdown,
18 the government affirmatively chose to repair and alter the very vehicle it
19 alleges were involved in the crash where another car involved in some form
20 of collision was used as a “deadly weapon.” Unlike in *Zaragoza-Moreira*, this
21 was not passive or inadvertent loss; it was a volitional act that destroyed
22 uniquely exculpatory physical evidence after formal notice of its significance.
23 Such conduct demonstrates not mere negligence but deliberate indifference,
24 satisfying the bad faith standard articulated in *Youngblood* and compelling
25 dismissal with prejudice.

26 The Ninth Circuit made clear that once the government is placed on
27 notice of a defense request to preserve specific evidence, its subsequent
28

1 failure to protect that evidence demonstrates bad faith when the exculpatory
2 value is “readily apparent.” *Zaragoza-Moreira*, 780 F.3d at 978. Here, the
3 exculpatory value of the vehicles was not only readily apparent, it was the
4 central issue in the case as stated in the Complaint. Accordingly, the
5 government’s decision to permit the repair and alteration of those vehicles
6 after receiving a preservation request constitutes bad faith under *Zaragoza-*
7 *Moreira* and requires dismissal of the indictment with prejudice.

8 **D. Rule 16 separately requires dismissal**

9 The government’s conduct also violates its disclosure and preservation
10 obligations under Rule 16 of the Federal Rules of Criminal Procedure. Rule
11 16(a)(1)(E) requires the government, upon a defendant’s request, to permit
12 inspection of any tangible object “within the government’s possession,
13 custody, or control” that is either (1) material to preparing the defense, (2)
14 intended for use by the government in its case-in-chief, or (3) obtained from
15 or belongs to the defendant. Fed. R. Crim. P. 16(a)(1)(E).

16 The vehicle at issue falls squarely within each of these categories. It
17 was within the government’s control, formed the central basis of the
18 prosecution’s theory, and was among the very objects the defense sought to
19 inspect to prepare its case. The vehicle’s materiality to the preparation of the
20 defense trial strategy cannot be disputed. Despite the defense’s formal
21 written request for inspection under Rule 16, *see* Ex. A, and the government’s
22 acknowledgment that it would “make available for [defense] inspection any
23 item of evidence referred to above,” *see* Ex. B, the government knowingly
24 permitted the vehicle to be repaired and materially altered before inspection
25 could occur. This conduct deprived the defense of its Rule 16 right to
26 meaningfully inspect and test the evidence and constitutes a direct violation
27 of the rule’s purpose of ensuring fairness, preventing surprise, and allowing
28

1 adequate trial preparation. By failing to preserve and produce the vehicles in
2 their original condition after formal notice, the government disregarded its
3 continuing duty to comply with discovery obligations, thereby undermining
4 both the letter and spirit of Rule 16.

5 **IV. CONCLUSION**

6 Mr. Bandon-Saavedra has endured significant and continued
7 deprivations of his constitutional right to a fair trial in this proceeding. The
8 most recent deprivation, the irreparable harm he has suffered attending the
9 spoilation of evidence, warrants dismissal.

10 For these reasons, Mr. Bandon-Saavedra respectfully requests that
11 this Court dismiss the indictment with prejudice.

12
13 Respectfully submitted,

14 CUAUHTEMOC ORTEGA
15 Federal Public Defender

16 DATED: October 29, 2025 By s/ Ayah A. Sarsour
17 AYAH A. SARSOUR
18 Deputy Federal Public Defender

19 By s/ Chad Pennington
20 Chad Pennington
21 Deputy Federal Public Defender

22
23 **CERTIFICATE OF COMPLIANCE AND DECLARATION**

24 I, Chad Pennington, counsel of record for the defendant, certify that
25 this filing complies with the requirements of L.R. 11-6.1 with 5,882 words.

26 I, Chad Pennington, counsel of record, further certified under penalty
27 of perjury that the representations in this filing are true and accurate.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: October 29i just , 2025 By s/ Chad Pennington
Chad Pennington
Deputy Federal Public Defender