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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,  
  
                    Plaintiff,  
  
          v.  
  
NICOLAS VASQUEZ, II,  
  
                    Defendant.

No. 2:25-cr-135-WBS

MEMORANDUM AND ORDER RE:  
DEFENDANT’S MOTION TO DISMISS

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Defendant Nicolas Vasquez, II was indicted on May 29, 2025, and charged with unlawfully possessing ammunition in violation of 18 U.S.C. § 922(G)(1). (Docket No. 1.) Because Vasquez was found to qualify for appointment of counsel, at his initial appearance on June 2, 2025, the Federal Defender was appointed to represent him. (Docket No 7.) Later, on August 4, 2025, because Vasquez was dissatisfied with the representation being afforded to him by the Federal Defender, the court referred the matter for appointment of outside counsel to represent him. (Docket No. 21.) On August 6, 2025, the court ordered present

1 counsel Danica Mazenko appointed to represent defendant pursuant  
2 to the Criminal Justice Act (CJA), 18 U.S.C. § 3006A. (Docket  
3 No. 23.)

4 Vasquez, through his newly appointed attorney, has now  
5 filed a motion to dismiss the charges against him with prejudice,  
6 claiming a deprivation of his right to counsel as guaranteed by  
7 the Sixth Amendment to Constitution. U.S. Const. amend. VI; see  
8 also Gideon v. Wainwright, 372 U.S. 335, 340 (1963). (Docket No.  
9 34.) Vasquez argues that due to the ongoing lapse in federal  
10 funding, “[t]he prolonged non-payment of appointed counsel  
11 violates Defendant’s Sixth Amendment rights and the fundamental  
12 guarantee of Gideon v. Wainwright, warranting dismissal of the  
13 indictment.” (Id. at 6.)

14 Vasquez alleges that funding for defense counsel  
15 appointed under the CJA was depleted in July 2025 with the result  
16 that his counsel “has been working without significant  
17 compensation on CJA cases since June 2025.” (Docket No. 34 at  
18 2.) As a result of this delay in CJA reimbursements, he argues  
19 that “an untenable conflict between counsel’s professional  
20 obligations and their basic economic survival” has been created  
21 that “undermines the attorney-client relationship and compromises  
22 the quality of representation guaranteed by the Sixth Amendment.”  
23 (Id. at 2-3.)

24 I. There is no constitutional right to compensation for court-  
25 appointed counsel in these circumstances.

26 The Sixth Amendment does not require that court-  
27 appointed counsel be compensated. Gideon v. Wainwright, 372 U.S.  
28 335 (1963), establishes that indigent defendants have a right to

1 court-appointed counsel, and Strickland v. Washington, 466 U.S.  
2 668 (1984), mandates that defendants receive effective assistance  
3 of counsel. However, there is nothing in the Constitution, and  
4 nothing in Gideon, Strickland, or their progeny, requiring that  
5 counsel receive compensation for representing an indigent  
6 criminal defendant.

7 To the contrary, numerous federal courts have  
8 repeatedly and explicitly held that court-appointed counsel do  
9 not have any constitutional right to compensation. See Scheehle  
10 v. Justs. of Supreme Ct. of Ariz., 508 F.3d 887, 894–95 (9th Cir.  
11 2007) (“The position that any imposition on an attorney’s time  
12 must be compensated is foreclosed by our prior opinions.”

13 (cleaned up); see also United States v. Dillon, 346 F.2d 633 (9th  
14 Cir. 1965), cert. denied, 382 U.S. 978 (1966); United States v.  
15 30.64 Acres of Land, 795 F.2d 796, 803 (9th Cir. 1986) (“If a  
16 court determines that a case has sufficient merit and a litigant  
17 sufficient need to justify uncompensated representation by  
18 counsel, we are confident that individual members of the bar will  
19 respect that decision and provide the needed services.”) (citing  
20 Rhodes v. Houston, 258 F.Supp. 546, 579 (D.Neb. 1966) (“To the  
21 credit of the legal profession, it may be declared that such a  
22 refusal will rarely occur.”) (emphasis in original), aff’d, 418  
23 F.2d 1309 (8th Cir. 1969), cert. denied, 397 U.S. 1049 (1970));  
24 Powell v. State of Alabama, 287 U.S. 45, 73 (1932) (“Attorneys  
25 are officers of the court, and are bound to render service when  
26 required by such an appointment.”); Peterson v. Nadler, 452 F.2d  
27 754, 758 (8th Cir. 1971); Fam. Div. Trial Laws. of Superior Ct.-  
28 D.C., Inc. v. Moultrie, 725 F.2d 695, 705 (D.C. Cir. 1984)

1 ("[T]here is no facial unconstitutionality to the statute or  
2 rules that require appointments in uncompensated cases.").  
3 (collecting cases).

4 In United States v. Dillon, the Ninth Circuit held that  
5 there was "an obligation on the part of the legal profession to  
6 represent indigents upon court order, without compensation." 346  
7 F.2d 633, 635 (9th Cir. 1965), cert. denied, 382 U.S. 978 (1966).  
8 There the court reasoned that:

9 An applicant for admission to practice law may justly  
10 be deemed to be aware of the traditions of the  
11 profession which he is joining, and to know that one  
12 of these traditions is that a lawyer is an officer of  
13 the court obligated to represent indigents for little  
14 or no compensation upon court order. Thus, the lawyer  
15 has consented to, and assumed, this obligation and  
16 when he is called upon to fulfill it, he cannot  
17 contend that it is a "taking of his services."

18 Id.; cf. Kunhardt & Company, Inc. v. United States, 266 U.S. 537  
19 (1925).

20 Similarly, in 30.64 Acres of Land, the Ninth Circuit  
21 observed that,

22 Courts have long recognized that attorneys, because of  
23 their profession, owe some duty to the court and to  
24 the public to serve without compensation when called  
25 on. ... [T]he obligation of the legal profession to  
26 serve indigents on court order is an ancient and  
27 established tradition, and ... appointed counsel have  
28 generally been compensated, if at all, only by  
statutory fees which would be inadequate under just  
compensation principles, and which are usually payable  
only in limited types of cases.

795 F.2d at 800-01.

The Dillon court further explained that decisions about

1 schemes providing for the compensation of court-appointed counsel  
2 are the purview of legislatures, not courts:

3 The problem of providing some system of compensation  
4 for appointed counsel, in light of the developing law  
5 of the right of indigents to counsel, is a matter for  
6 legislative and not judicial treatment. This fact has  
7 been recognized by the Congress in the enactment of  
8 the Criminal Justice Act of 1964, 78 Stat. 552. The  
9 provisions of the Act clearly show that the  
10 compensation provided for in said Act is not based  
11 upon the principles of just compensation which appear  
12 in the Fifth Amendment.

13 Dillon, 346 F.2d at 636; see Hurtado v. United States, 410 U.S.  
14 578, 588-89 (1973) (citing Dillon); see also White v. United  
15 States Pipe & Foundry Co., 646 F.2d 203, 205 n. 3 (5th Cir.  
16 1981).

17 Indeed, “[a]ny doubt that a state could require some  
18 services from an attorney without compensation was dissolved by  
19 our opinion in 30.64 Acres of Land[.]” Scheehle, 508 F.3d at 894-  
20 95. That said, some courts have left room for the possibility  
21 that an attorney’s appointment without compensation may  
22 constitute a violation of either the Fifth or Thirteenth  
23 Amendments, but these exceptions are especially narrow.<sup>1</sup>

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24 <sup>1</sup> In Moultrie, the court opined that where a system for  
25 the court-appointment of counsel without compensation  
26 “effectively denies [counsel] the opportunity to maintain a  
27 remunerative practice before their specialized division, and that  
28 specialty practice is determined to be a ‘property’ interest, it  
might effect an unconstitutional ‘taking.’” 725 F.2d at 706  
(cleaned up).

Similarly, the Moultrie court also concluded that no  
“genuine thirteenth amendment issue” was raised because “[a]n  
attorney who wishes to take no further assignments is free to  
either stop practicing before the Family Division, or even to  
continue to practice without taking CJA-compensated juvenile  
cases.” 725 F.2d at 704-05. According to that court, the key  
ingredient for establishing a claim of involuntary servitude  
under the Thirteenth Amendment is the “[i]nability to avoid

1           Exceptions which do not apply in this case  
2 notwithstanding, on balance the precedent on this question is  
3 resoundingly clear. The position advanced by Vasquez is not  
4 merely novel, it runs contrary to the *overwhelming* weight of  
5 well-established precedent.

6       II. Vasquez's counsel has not been denied compensation

7           The foregoing discussion is unnecessary, however,  
8 because even if Vasquez were constitutionally entitled to counsel  
9 who was compensated by the court, his attorney has not been  
10 denied compensation. CJA-appointed counsels' compensation has  
11 only delayed, not denied, by the lack of funding, and at this  
12 stage in his case Vasquez's counsel is not entitled to receive  
13 any compensation.

14           First, CJA-appointed counsel have not been denied  
15 compensation due to the government shutdown. Rather, their  
16 compensation has merely been deferred or delayed until such time  
17 as Congress funds the government.

18           The United States Courts Defender Services has  
19 explained that:

20           Fiscal Year 2025 Criminal Justice Act (CJA) panel  
21 attorney funds were depleted around July 3, 2025.  
22 Panel attorney payments have been deferred (except for  
23 one batch of payments on September 18) since that  
24 date. The deferred payments from fiscal year 2025,  
25 and new fiscal year 2026 panel attorney payments,  
continue to be deferred during the current lapse in  
appropriations. *Panel attorney payments will resume  
when a continuing resolution is passed by Congress and*

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26 continued service[.]” Id. (citing see Flood v. Kuhn, 443 F.2d  
27 264 (2d Cir. 1971), aff'g 316 F.Supp. 271 (S.D.N.Y. 1970), aff'd  
28 on other grounds, 407 U.S. 258 (1972); Wicks v. Southern Pacific  
Co., 231 F.2d 130, 138 (9th Cir. 1956), cert. denied, 351 U.S.  
946 (1956)).

1 signed into law by the President. Please continue to  
2 file, process, and approve CJA vouchers as normal  
3 during the payment deferrals so that payments can be  
4 disbursed as soon as funding becomes available.

4 UNITED STATES COURTS: DEFENDER SERVICES, CJA Panel Attorney Funds

5 Information FY 2025 (updated: Oct. 6, 2025),

6 [https://www.uscourts.gov/about-federal-courts/defender-  
8 services/cja-panel-attorney-funds-information-fy-2025](https://www.uscourts.gov/about-federal-courts/defender-<br/>7 services/cja-panel-attorney-funds-information-fy-2025) (last  
9 visited Oct. 17, 2025) (emphasis added).

9 Once Congress funds the government, CJA-appointed  
10 counsel will be entitled to receive their reimbursements  
11 including back-pay. Contrary to Vasquez's claims, then, the  
12 government has not refused "to honor its compensation  
13 obligations." (Docket No. 34 at 4.) More accurately, the  
14 government has deferred the honoring of those obligations. These  
15 actions are not the same and Vasquez errs by conflating them.

16 Second, the government correctly notes that CJA-  
17 appointed counsel do *not* receive a salary for representing  
18 defendants in federal court. Rather, they submit vouchers  
19 requesting reimbursement following the conclusion of their  
20 representation. It is the court, not the government, that  
21 determines whether, how much, and when the attorney shall be  
22 paid. See United States v. Feldman, 788 F.2d 625, 626 (9th Cir.  
23 1986). If waiting to be compensated until the conclusion of  
24 representation would pose a hardship on counsel, in exceptional  
25 cases the court in its discretion can approve vouchers for  
26 interim payments, but there is no suggestion that this is such a  
27 case.

28 Here, counsel for Vasquez was appointed on August 5,

1 2025. (Docket No. 34 at 1.) Since taking the case, Vasquez's  
2 counsel has received discovery from the government (Docket No. 26  
3 at ¶ 3(a-b)) and jointly moved to continue the status conference  
4 until October 20, 2025 (Id. at ¶ 2), and no trial date has been  
5 set. In other words, rather than having concluded, the case  
6 against Vasquez is ongoing, and counsel's representation is just  
7 beginning. Further, counsel has not identified any costs which  
8 have been incurred in the course of representation and are ready  
9 to be submitted for payment.

10 III. The record does not support a finding of an actual conflict  
11 of interest that violates Vasquez's Sixth Amendment rights

12 "Where a constitutional right to counsel exists, our  
13 Sixth Amendment cases hold that there is a correlative right to  
14 representation that is free from conflicts of interest." Wood v.  
15 Georgia, 450 U.S. 261, 271 (1981) (citing Cuyler v. Sullivan, 446  
16 U.S. 335 (1980)); see also Holloway v. Arkansas, 435 U.S. 475,  
17 481 (1978). However, "in order to obtain a dismissal of the  
18 indictment," a defendant bears the burden of establishing that he  
19 is adversely affected by his representation such that his Sixth  
20 Amendment right to counsel has been violated. United States v.  
21 Kriens, 270 F.3d 597, 603 (8th Cir. 2001); see also United States  
22 v. Solomon, 679 F.2d 1246, 1250 (8th Cir. 1982).

23 Importantly, when a defendant alleges that he was  
24 adversely affected by his counsel's conflict of interest, "the  
25 constitutional predicate for his claim" is not satisfied "until  
26 [he] shows that his counsel *actively represented conflicting*  
27 *interests[.]*" Cuyler, 446 U.S. at 350 (citation omitted)  
28 (emphasis added). Said another way, "[i]n order to demonstrate a

1 violation of his Sixth Amendment rights, a defendant must  
2 establish that an actual conflict of interest adversely affected  
3 his lawyer's performance." Id.

4 Here, that burden has not been met. Vasquez argues  
5 that the delayed compensation for his CJA-appointed counsel  
6 creates a conflict between "counsel's duty to zealously represent  
7 [Vasquez] and counsel's need for economic survival" that  
8 "undermines the attorney-client relationship and compromises the  
9 quality of representation guaranteed by the Sixth Amendment."  
10 (Docket No. 34 at 3.) Vasquez has shown neither that any actual  
11 conflict of interest exists, or that his counsel is actively  
12 representing that conflicting interest.

13 First, Vasquez's counsel accepted his case on August 5,  
14 2025, which was by her own admission at least a month after CJA-  
15 appointed counsel were last reimbursed. (Id. at 2 ("Funding ran  
16 out in July 2025, and as a result the undersigned has been  
17 working without significant compensation on CJA cases since June  
18 2025.")) Vasquez's argument for a conflict of interest might be  
19 more persuasive had his counsel not accepted appointment *after*  
20 she was on notice that funding for CJA-appointed counsel had  
21 *already been exhausted*. To date, Vasquez's counsel has not filed  
22 a motion to withdraw, as would be proper in the event of a  
23 *genuine* conflict of interest.

24 This record suggests either that no actual conflict  
25 exists or that it is only theoretical. See Bonin v. Calderon, 59  
26 F.3d 815, 827 (9th Cir. 1995) ("[M]inor or potential conflicts of  
27 interest often exist which might theoretically or conceivably  
28 affect an attorney's representation, but are not likely to do so.

1 Such 'potential' conflicts are insufficient[.]").

2           Second, even if there were an actual conflict of  
3 interest due to the deferred compensation, Vasquez has not  
4 established that his counsel is actively representing that  
5 conflicting interest. See Atkins v. Bean, 122 F.4th 760, 786-87  
6 (9th Cir. 2024) (finding no actual conflict where defendant  
7 "failed to show any deficient performance by counsel or resulting  
8 prejudice."), cert. denied, No. 24-7302, 2025 WL 2906511 (U.S.  
9 Oct. 14, 2025).

10           Counsel's own argument affirms that she has diligently  
11 sought to fulfill her professional and ethical duties. "[T]here  
12 is a 'presumption that the lawyer will subordinate his pecuniary  
13 interests and honor his primary professional responsibility to  
14 his clients in the matter at hand.'" United States v. Walter-Eze,  
15 869 F.3d 891, 902 (9th Cir. 2017) (citation omitted). According  
16 to Vasquez's motion, "[d]espite the lack of compensation," his  
17 counsel has "continued to represent the Defendant to prevent  
18 immediate prejudice[.]" (Docket No. 34 at 2.) Indeed, her  
19 actions filing this very motion – one which advances a novel  
20 legal argument – strongly suggest that she continues to zealously  
21 represent her client's interests.

22           Counsel's contention that due to the lapse in funding,  
23 Vasquez cannot access a psychologist in order to evaluate whether  
24 he is competent to stand trial is premature at best. Ordinarily,  
25 CJA-appointed counsel would first submit a request to retain an  
26 expert. The court would then have to approve the request and,  
27 eventually, authorize payment for their services at the  
28

1 conclusion of the expert's services.<sup>2</sup> But because no such  
2 request has been presented here, the court has not had the  
3 opportunity to consider much less approve it. Consequently, the  
4 dilemma counsel claims to face is merely hypothetical at this  
5 stage and no actual conflicting interest exists for counsel to  
6 represent in violation of the Sixth Amendment.

7 The court is, thus, not persuaded either that Vasquez's  
8 counsel is actively representing a conflicting interest or that  
9 her delayed compensation constitutes an actual conflict of  
10 interest in the first place.

11 IV. Ake v. Oklahoma

12 Vasquez argues that "the right to counsel is  
13 meaningless without adequate resources to mount an effective  
14 defense." (Docket No 34 at 3 (citing Ake v. Oklahoma, 470 U.S.  
15 68, 77 (1985)).) While as a general proposition that is true, it  
16 does not apply to this case for the following reasons:

17 <sup>2</sup> In his reply brief, defendant states that "CJA  
18 attorneys in the Eastern District of California no longer have  
19 any psychologists to call upon for CJA cases, at least until the  
20 budget crisis is resolved." He adds that psychologists and other  
21 experts will accept CJA cases only if appointed counsel advance  
22 their personal funds to cover the expected fees. (Docket No. 37  
23 at 3.) At oral argument, defense counsel stated she had  
24 attempted to retain one psychologist who was unavailable, and  
25 that she had spoken with 20 other CJA attorneys who told her  
26 there were no experts who would accept appointment. Since this  
27 is the first time the court has heard any of these hearsay  
28 allegations, the government has not had an adequate opportunity  
to respond to them, nor has the court had an opportunity to  
explore, through the Federal Defender, whether there are  
psychologists available to accept the appointment. After all, it  
is not as if they would not be paid. They would only have to  
wait for payment until after the shutdown, and they would have to  
wait until after their services have been performed anyway. It  
is hard to believe that there is no qualified psychologist who  
would accept appointment on these terms.

1           In Ake, the Supreme Court “focused on identifying the  
2   ‘basic tools of an adequate defense or appeal,’” and “required  
3   that such tools be provided to those defendants who cannot afford  
4   to pay for them.” Ake, 470 U.S. at 77 (citing Britt v. North  
5   Carolina, 404 U.S. 226, 227 (1971)). The specific “tool” at  
6   issue in Ake was an expert evaluation by a psychiatrist in  
7   support of an insanity defense. Id. at 72; see also id. at 70  
8   (“The issue in this case is whether the Constitution requires  
9   that an indigent defendant have access to the psychiatric  
10   examination and assistance necessary to prepare an effective  
11   defense based on his mental condition, when his sanity at the  
12   time of the offense is seriously in question.”).

13           In his motion, Vasquez failed to specify any “basic  
14   tools” he is being denied as a result of delayed compensation for  
15   his CJA-appointed counsel. Now, for the first time, in Vasquez’s  
16   reply to the government’s opposition to the motion, his attorney  
17   indicates that the real problem is that she is unable to explain  
18   the procedure for requesting a bail review to Vasquez and that he  
19   is immovable in his believe that he is entitled to pretrial  
20   release. As a result, she feels a psychological evaluation of  
21   the defendant is a basic resource she needs in order to provide  
22   effective representation. However, she says that “most CJA  
23   providers and experts ceased accepting appointments to new cases  
24   in July and August of 2025.” (Docket No. 37 at 3.) She adds  
25   that “BOP facility forensic psychologists are currently  
26   furloughed.

27           These facts might justify a court session at which the  
28   mechanics of pretrial release and bail review are further

1 explained to Vasquez. They might also justify enlisting the  
2 assistance of the Federal Defender's office in finding a  
3 qualified expert who is willing to consult with counsel and/or  
4 examine the defendant. But other than making passing mention of  
5 these options in her reply brief, counsel has made no request for  
6 any of them, and dismissal of the indictment is certainly not  
7 justified on the basis of this record.

8 More generally, Vasquez's reliance on Ake is misplaced  
9 as the case is properly distinguished because scope of the  
10 Court's holding in Ake was limited due to the facts of that case,  
11 most especially that it was a capital case: "Nothing in the  
12 Court's opinion reaches non-capital cases." Ake, 470 U.S. at 87  
13 (Burger, C.J., concurring) ("The facts of the case and the  
14 question presented confine the actual holding of the Court. In  
15 capital cases the finality of the sentence imposed warrants  
16 protections that may or may not be required in other cases.")).  
17 Here, Vasquez has not been charged with a capital offense. (See  
18 generally Docket No. 1.)

19 Further, Vasquez asserts that the "fundamental fairness  
20 and equal protection principles inherent in the adversarial  
21 system" has been violated because the prosecutors are being  
22 compensated while defense counsel are not. (Id. at 3.) But with  
23 there being no action in this case other than a continuance of  
24 the status conference while Vasquez's counsel caught herself up  
25 with the case to date, Vasquez has not pointed to any  
26 prosecutorial activities on the part of the government (other  
27 than providing Vasquez with discovery) that prejudiced him.

28 Nor has Vasquez shown how he even *could* be prejudiced

1 by the government temporarily continuing to prosecute its case  
2 against him given that CJA-appointed counsel, not being salaried,  
3 are typically only entitled to reimbursement *after* the conclusion  
4 of their representation. Moreover, even if the Court agreed with  
5 Vasquez's on this point, his claim would have been mooted when  
6 funding lapsed on October 1, 2025. Since that date, counsel for  
7 the government has been operating under the same reimbursement  
8 conditions as CJA-appointed counsel. (Docket No. 36 at 6 n. 6.)

9 V. State v. Peart

10 Vasquez argues that "[a]t least one court has  
11 recognized that dismissal may be warranted when systemic  
12 underfunding of defense counsel violates constitutional rights."  
13 (Docket No. 34 at 4.) Indeed, Vasquez identifies *only* one case:  
14 State v. Peart, 621 So. 2d 780 (La. 1993). Setting aside the  
15 fact that Peart is not a not a federal court decision, but a  
16 Louisiana Supreme Court case arising from a state court  
17 proceeding, the facts of Peart clearly distinguish it from the  
18 facts of this case.

19 In Peart, the trial court found that Teissier, the  
20 defender in question, "was not able to provide his clients with  
21 reasonably effective assistance of counsel because of the  
22 conditions affecting his work, primarily the large number of  
23 cases assigned to him." 621 So. 2d at 784. The trial court found  
24 that,

25 At the time of his appointment, Teissier was handling  
26 70 active felony cases. His clients are routinely  
27 incarcerated 30 to 70 days before he meets with them.  
28 In the period between January 1 and August 1, 1991,  
Teissier represented 418 defendants. Of these, he  
entered 130 guilty pleas at arraignment. He had at

1 least one serious case set for trial for every trial  
2 date during that period. OIDP has only enough funds  
3 to hire three investigators. They are responsible for  
4 rendering assistance in more than 7,000 cases per year  
5 in the ten sections of Criminal District Court, plus  
6 cases in Juvenile Court, Traffic Court, and  
7 Magistrates' Court. In a routine case Teissier  
8 receives no investigative support at all. There are  
9 no funds for expert witnesses. OIDP's library is  
10 inadequate.

11 Id.

12 Ultimately, the trial court found that the system of  
13 compensation for counsel representing indigent defendants "was  
14 unconstitutional as applied in the City of New Orleans because it  
15 [did] not provide adequate funding for indigent defense and  
16 because it place[d] the burden of funding indigent defense on the  
17 city of New Orleans." Id. On appeal, the Louisiana Supreme Court  
18 overturned the trial court's rulings as to the statutory scheme  
19 for funding counsel for indigent defendants and remanded the case  
20 back to the trial court for further proceedings. Id. at 792. In  
21 particular, on remand the Louisiana high court also found that  
22 Peart and other indigent defendants similarly situated may have  
23 been deprived of effective assistance of counsel and so  
24 instructed the trial court to hold such hearings as necessary to  
25 ensure defendants' rights were not violated. Id.

26 Nothing like the facts in Peart can be found from the  
27 record in this case. While a state court in one case found that  
28 dismissal may be appropriate on a case-by-case basis where  
indigent defendants are represented by a wholly under resourced  
representation funding scheme, the extreme factual context of  
Peart make it entirely inapplicable to this case.

1  
2 VI. Vasquez's proposed alternative remedies

3 As alternatives to dismissal of the indictment with  
4 prejudice, Vasquez suggests several lesser remedies, which are  
5 either unnecessary, inadequate or excessive. Releasing him on  
6 his own recognizance fails to either rectify the prejudice or  
7 mitigate the conditions giving rise to it and would ignore the  
8 Pretrial Services officer's determination that Vasquez poses both  
9 a flight risk and an ongoing danger to the public. (See Docket  
10 No. 30 at 4.) Issuing an "[o]rder requiring immediate payment of  
11 all outstanding fees in all CJA cases". (Id.), is untenable  
12 because it is inappropriately broad and would require the court  
13 to exercise authority that it does not have - namely, to order  
14 the federal government to issue payment of funds not yet  
15 appropriated by Congress.

16 The suggestion that this court should dismiss the  
17 Indictment in this federal case in favor of prosecution by the  
18 local prosecutor in state court runs afoul of both the concept of  
19 federalism and the separation of powers. The Ninth Circuit has  
20 cautioned that charging decisions are within the prosecutors',  
21 and not the courts', domain. See United States v. Miller, 722  
22 F.2d 562, 565 (9th Cir. 1983). It is within the exclusive  
23 province of the United States Attorney to determine what charges  
24 are to be brought and where.

25 VII. Conclusion

26 This motion is just one of a number of similar motions  
27 filed in cases pending in this and other districts seeking to  
28

1 dismiss indictments because of the lack of funds to pay the fees  
2 and costs of defense incurred by court-appointed counsel.  
3 Counsels' characterization of this situation as unprecedented is  
4 more than just a little misleading. It has been only 32 days  
5 since the last batch of CJA payments was issued and 20 days since  
6 Congress failed to make appropriations to fund government  
7 operations. While the current lapse in funding may be longer  
8 than previous ones, it is certainly not the first.

9 To put this in historical perspective, during the more  
10 than 19 months between the Supreme Court's decision in Gideon and  
11 the enactment of the CJA, the courts were required to appoint  
12 counsel for indigent defendants, although Congress had not  
13 appropriated funds to compensate attorneys to represent such  
14 defendants, and there were no paid federal defenders. The  
15 courts' solution for that crisis was not to summarily dismiss the  
16 indictments in all pending cases against indigent defendants, nor  
17 to preclude the government from bringing such cases, or even to  
18 stay the proceedings. Instead, the lawyers of this community  
19 answered the call by willingly undertaking representation of  
20 those indigent defendants pro bono.

21 Subsequently, since the implementation of the  
22 Congressional Budget and Impoundment Control Act of 1974, there  
23 have been 20 federal government shutdowns due to a lapse in  
24 funding, excluding the current shutdown. See CONG. RESEARCH SERV.,  
25 RL34680, *Shutdown of the Federal Government: Causes, Processes,*  
26 *and Effects* 6 tbl.1 (2019),  
27 <https://sgp.fas.org/crs/misc/RL34680.pdf>. Throughout this 48-  
28 year history, no federal court to this court's knowledge has found

1 that the delayed reimbursement of CJA-appointed defense counsel  
2 constituted a violation of a defendant's Sixth Amendment right to  
3 counsel.

4 "[T]he power to dismiss an indictment is 'reserved ...  
5 for extremely limited circumstances.' Whitehouse v. United States  
6 District Court, 53 F.3d 1349, 1360 (1st Cir. 1995) (citing Bank  
7 of Nova Scotia v. United States, 487 U.S. 250, 263 (1988))."  
8 United States v. Lin, No. 22-CR-10279-AK-11, 2025 WL 641371, at  
9 \*3 (D. Mass. Feb. 27, 2025). As such, "[d]ismissal of an  
10 indictment is not to be lightly granted." United States v. Soc'y  
11 of Indep. Gasoline Marketers, No. B-76-0314, 1977 WL 1508, at \*2  
12 (D. Md. Feb. 24, 1977).<sup>3</sup> For the reasons discussed above, the  
13 court finds that Vasquez has failed to show the exceptional  
14 circumstances necessary to justify departure from this long-  
15 standing precedent counselling against dismissal.

16 IT IS THEREFORE ORDERED that defendant's Motion to  
17 Dismiss (Docket No. 34) be, and the same hereby is, DENIED.

18 Dated: October 20, 2025

19   
20 **WILLIAM B. SHUBB**  
21 **UNITED STATES DISTRICT JUDGE**

22  
23  
24 <sup>3</sup> See also United States v. Filer, 762 F. Supp. 3d 730,  
25 746 (N.D. Ill. 2025), appeal dismissed, No. 25-1079, 2025 WL  
26 1952087 (7th Cir. Jan. 19, 2025) (citations omitted) (holding  
27 that "Federal courts are advised to exhibit a modicum of  
28 restraint when considering whether to dismiss an indictment  
because a dismissal encroaches not only upon the fundamental role  
of the grand jury, but also upon the role of the prosecutor.")  
(citation omitted)).