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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
JULIAN RAYMON ORTIZ,
Defendant.

No. 2:24-cr-00302-JAM

ORDER GRANTING MOTION TO DISMISS

I. INTRODUCTION

The current Motion to Dismiss filed on behalf of Defendant Julian Raymon Ortiz ("Defendant") presents an issue of first impression with no known appellate court precedent. Specifically, Defendant moves this Court to dismiss the indictment in this matter under Federal Rule of Criminal Procedure 12(b)(1) arguing his Sixth Amendment Right to Counsel has been violated because his counsel, who was appointed and assigned to Defendant pursuant to the Criminal Justice Act ("CJA"), 18 U.S.C. § 3006A, has not received any compensation for her representation since June 2025. This failure to pay these statutory mandated funds has created an untenable conflict

1 between her professional obligations to her client and her
2 economic survival. Defendant further argues that the
3 Government's prosecution of this case has continued undeterred
4 while defense counsel and staff remain unpaid, creating a
5 fundamental imbalance in the adversarial system.

6 The Sixth Amendment guarantees that "in all criminal
7 prosecutions, the accused shall enjoy the right to have
8 Assistance of Counsel for his defense." Gideon v. Wainwright,
9 372 U.S. 335, 340 (1963). This right requires the appointment of
10 counsel for Defendant here who effectively assists him in his
11 defense against the serious criminal charge he faces. The right
12 to counsel is meaningless without adequate resources to mount an
13 effective defense. Ake v. Oklahoma, 470 U.S. 68, 77 (1985).
14 Thus, Defendant asks that the charge against him be dismissed.
15 In the alternative, he requests that this matter be stayed; that
16 he be released from custody pending resolution of the funding
17 crisis; and/or his attorney be permitted to withdraw.

18 As discussed below, the Court finds that dismissal is
19 warranted here. The right to effective assistance of counsel is
20 a bedrock principle of this country and is indisputably necessary
21 for the operation of a fair criminal justice system. The
22 systematic and ongoing failure of the Government to fund CJA-
23 appointed attorneys for the past five months has created an
24 indefensible situation in which CJA defense counsel, such as
25 counsel here, are expected to competently represent and defend
26 their clients despite a complete lack of resources to do so.
27 Trial is set in this matter for January 26, 2026, a mere ten
28 weeks from now. To expect defense counsel to properly prepare

1 for trial, while consistently denying her the tools to do so is,
2 in this Court's view, not only unconscionable but also
3 unconstitutional. Under these unique and unprecedented
4 circumstances, the Court finds that Defendant's constitutional
5 right to an attorney who is obligated to zealously and adequately
6 represent him has been violated. As for the remedy for this
7 violation, the Court finds that dismissal of the indictment
8 without prejudice is the appropriate remedy.

9 **II. BACKGROUND**

10 In 1964, responding to the Supreme Court's decision in
11 Gideon v. Wainwright, 372 U.S. 335 (1963), Congress enacted the
12 CJA "[t]o promote the cause of criminal justice by providing for
13 the representation of defendants who are financially unable to
14 obtain an adequate defense in criminal cases in the courts of the
15 United States." Pub.L. 88-455, 78 Stat. 552 (codified as amended
16 at 18 U.S.C. § 3006A). Congress enacted the CJA to both "assure
17 adequate representation in the Federal courts of accused persons
18 with insufficient means," and to "afford[] reasonable
19 compensation to counsel who are assigned." In re Smith, 586 F.3d
20 1169, 1175 (9th Cir. 2009) (quoting S. Rep. No. 88-346, at 1
21 (1963)). Thus, the CJA authorizes the appointment of, and
22 compensation for, counsel to represent indigent defendants
23 charged with federal offenses. 18 U.S.C. § 3006A. Attorneys are
24 paid in accordance with the CJA both for hours spent before the
25 court and those "reasonably expended out of court." 18 U.S.C.
26 § 3006A(d) (1).

27 Congress's purpose behind instituting CJA compensation was
28 to "ease the financial burden" associated with providing these

1 services which had been traditionally provided pro bono. United
2 States v. Diaz, 802 F. Supp. 304, 307 (C.D. Cal. 1992). Indeed,
3 in passing the CJA, many lawmakers “emphasized the shortcomings
4 of the existing system under which counsel were assigned on an
5 uncompensated, nonreimbursable basis” and “expressed concern for
6 the stability of convictions if that system were to continue.”
7 United States v. Bailey, 581 F.2d 984, 988 (D.C. Cir. 1978).
8 “Providing for compensation of such counsel was considered
9 necessary to prevent the ‘mere formal appointment’ of counsel and
10 to ensure reasonably diligent, conscientious and competent
11 representation.” Diaz, 802 F. Supp. at 307 (quoting Bailey, 581
12 F.2d at 988).

13 Defendant here was indicted on November 7, 2024, for one
14 count of distribution of methamphetamine in violation of 21
15 U.S.C. § 841(a)(1). ECF No. 1. The Court held a detention
16 hearing on November 19, 2024, during which Defendant was remanded
17 into custody¹ and Defendant’s current counsel was appointed under
18 the CJA after his previous counsel, the Office of the Federal
19 Public Defender, withdrew. ECF No. 10. The Court subsequently
20 set a trial date for January 26, 2026. ECF No. 21.

21 At the time defense counsel was appointed, the Government
22 was still in the process of paying CJA-appointed counsel,
23 paralegals, investigators, and experts for expenses related to
24 client representation. Mot. Dismiss at 1-2, ECF No. 23.
25 Payments were initially delayed in June 2025 due to a system
26 upgrade, and then completely stopped in July 2025. Id. at 2.

27
28 ¹ Defendant remains in custody at the time of this Order.

1 Despite the Government's obligation under the CJA to pay
2 appointed counsel, no payments to CJA-appointed counsel,
3 paralegals, investigators, or experts have been made since then.
4 Id. Accordingly, Defendant's counsel has worked without
5 compensation on CJA cases since June 2025. Id. CJA counsel were
6 assured that payments would resume once Congress passed a budget
7 for Fiscal Year 2026. Id. However, to-date, Congress has failed
8 to pass a federal budget, resulting in a continued funding lapse
9 that began on October 1, 2025.

10 Defendant filed the pending Motion to Dismiss (ECF No. 23)
11 on October 4, 2025, arguing that the ongoing CJA funding lapse
12 necessitates dismissal of the indictment in this case as
13 Defendant is being denied his Sixth Amendment Right to Counsel.
14 The Government filed an Opposition (ECF No. 24), and Defendant
15 filed a Reply (ECF No. 28). The Court held a hearing on November
16 4, 2025, and the Motion was taken under submission.

17 **III. LEGAL STANDARD**

18 Under Rule 12(b) of the Federal Rules of Criminal Procedure,
19 "[a] party may raise by pretrial motion any defense, objection,
20 or request that the court can determine without a trial on the
21 merits." Fed. R. Crim. P. 12(b)(1). "Generally, Rule 12(b)
22 motions are appropriate to consider 'such matters as former
23 jeopardy, former conviction, former acquittal, statute of
24 limitations, immunity, [and] lack of jurisdiction.'" United
25 States v. Nukida, 8 F.3d 665, 669 (9th Cir. 1993).

26 However, courts also possess inherent supervisory authority
27 to remedy serious structural defects in the criminal process,
28 see, e.g., United States v. Gonzalez-Lopez, 548 U.S. 140, 148

1 (2006) (recognizing structural error doctrine), and the judicial
2 power to dismiss indictments in extreme cases under this
3 supervisory authority. See United States v. Struckman, 611 F.3d
4 560, 574 (9th Cir. 2010); United States v. Isgro, 974 F.2d 1091,
5 1094 (9th Cir. 1992). The Ninth Circuit has recognized three
6 “legitimate reasons” for courts exercising supervisory powers to
7 dismiss indictments: “(1) to implement a remedy for the violation
8 of a recognized statutory or constitutional right; (2) to
9 preserve judicial integrity by ensuring that a conviction rests
10 on appropriate considerations validly before a jury; and (3) to
11 deter future illegal conduct.” United States v. Matta-
12 Ballesteros, 71 F.3d 754, 763 (9th Cir. 1995). An indictment can
13 only be dismissed under a court’s supervisory powers where a
14 defendant suffers “substantial prejudice” and “no less remedial
15 action is available[.]” United States v. Chapman, 524 F.3d 1073,
16 1087 (9th Cir. 2008) (quoting United States v. Jacobs, 855 F.2d
17 652, 655 (9th Cir. 1988) and United States v. Barrera-Moreno,
18 951 F.2d 1089, 1092 (9th Cir. 1991)).

19 IV. OPINION

20 A. Violation of Defendant’s Sixth Amendment Right

21 Defendant seeks dismissal of the indictment in this case
22 based on violations of his Sixth Amendment right to effective
23 counsel. Mot. Dismiss at 2-7. As noted above, Defendant
24 contends that the Government’s systematic failure to provide the
25 necessary and required resources for his defense to his counsel
26 for the past five months has resulted in a violation of his
27 constitutional right to representation. This situation has
28 resulted in an “untenable conflict between counsel’s professional

1 obligations and their basic economic survival," which undoubtedly
2 prejudices Defendant as his counsel faces the prospect of
3 preparing for trial with no financial resources at her disposal.
4 Id. at 2. Indeed, Defendant argues that "[n]o attorney can be
5 expected to work indefinitely without compensation while
6 maintaining the zealous advocacy required by professional
7 standards and constitutional mandate," and points out that
8 "[r]epresentation of a client includes conducting the necessary
9 investigation, assistance of experts and paralegals to prepare a
10 defense [which] cannot be done without compensation." Id. at 3.
11 Thus, Defendant argues that the "prolonged non-payment of
12 appointed counsel violates [his] Sixth Amendment rights and the
13 fundamental guarantee of Gideon v. Wainwright." Id. at 6. The
14 Court agrees.

15 Here, Congress's prolonged failure to provide funding for
16 defense counsel violates Defendant's fundamental constitutional
17 right. The Government argues that no constitutional injury has
18 occurred because "[n]othing in Ortiz's motion suggests or states
19 that counsel will not continue to represent him according to
20 counsel's ethical obligations, even absent the payment of fees on
21 other cases." Opp'n at 4, ECF No. 24. This argument ignores the
22 reality, however, that with only ten weeks until trial, defense
23 counsel finds herself in the impossible position of needing to
24 provide effective representation to Defendant without the ability
25 to pay for the resources required to do her job. Defendant's
26 right to counsel is meaningless without adequate resources to
27 mount a defense.

28 The law is clear that it is not sufficient that Defendant be

1 nominally provided with counsel. Strickland, 466 U.S. 685-86.
2 Rather, the Sixth Amendment requires that Defendant be provided
3 with effective assistance of counsel. Id. at 686. This
4 requirement cannot be satisfied under the current circumstances.
5 Congress's failure to fund defender services has left appointed
6 counsel and the providers necessary to properly prepare for trial
7 unable to fulfill her constitutionally mandated duties. The
8 Court holds, therefore, Defendant has been denied the right to
9 effective assistance of counsel.

10 B. Remedy for the Constitutional Violation

11 Defendant has also clearly suffered substantial prejudice
12 stemming from this violation of his constitutional right.
13 Defendant is incarcerated, his trial date is quickly approaching,
14 necessitating increased attention and preparation by both the
15 prosecution and the defense. But Defendant cannot prepare for
16 trial or move his case forward because the resources needed to
17 mount a defense have not been provided to him. Those resources
18 would allow defense counsel to accomplish vital tasks to
19 adequately represent Defendant at this stage, including
20 investigating Defendant's case, hiring experts, researching and
21 preparing motions in his defense, formulating a trial strategy,
22 and preparing exhibits. These are all basic tools necessary to
23 provide Defendant with effective representation that have been
24 meaningfully impeded by the longstanding and ongoing lack of
25 funding to conduct these tasks. In stark contrast, despite
26 payments for CJA counsel having stopped in June, the Government's
27 attorney admitted at the November 4 hearing that prosecution
28 efforts have continued unabated through most of that time and he

1 is prepared to begin trial on January 26, 2026. Thus, while
2 Defendant has no resources to defend himself in this case, the
3 Government has been able to fully engage in continued
4 investigation and trial preparation efforts without barriers.
5 Congress's astounding abdication of its duty to provide funding
6 for criminal defense counsel cannot be ignored or condoned. The
7 prejudice to Defendant by such an unprecedented and glaring
8 imbalance in the criminal justice system must be remedied under
9 this Court's inherent supervisory authority.

10 The Government urges the Court to deny Defendant's motion to
11 dismiss by adopting the reasoning in the recently issued order in
12 United States v. Vasquez, No. 2:25-cr-0135-WBS, 2025 WL 2961906
13 (E.D. Cal. Oct. 20, 2025). In Vasquez, the court denied a
14 similar motion to dismiss brought by CJA-appointed counsel who
15 had not been paid since June. As Defendant argues, Vasquez
16 should not be followed by this Court because it relies on aging
17 precedent concerning the historical legal tradition of pro bono
18 service to conclude that there is no constitutional right for
19 court-appointed criminal defense counsel, including CJA counsel,
20 to receive compensation. See id. at *2-6. This analysis appears
21 to focus primarily on defense counsel rather than on the
22 Defendant and the impact on him caused by the Government's Sixth
23 Amendment violation. The issue here is one of a violation of a
24 Defendant's right to adequate representation, not an attorney's
25 right to payment. The Vasquez opinion fails to grapple with the
26 prejudice to defendants resulting from Congress's choice not to
27 provide the resources to which they are constitutionally
28 entitled.

1 The Court agrees with Defendant and declines to follow
2 Vasquez. So long as no funding is being provided to Defendant,
3 the government is actively impeding Defendant's right to counsel.
4 This interference is so severe and beyond this Court's control
5 there is no lesser remedy at the Court's disposal that can
6 provide Defendant with the relief to which he is entitled. Under
7 these circumstances, this chronic constitutional violation can
8 only be remedied by a dismissal of the indictment.

9 When considering an exercise of its supervisory powers for
10 violations of a defendant's constitutional rights, a district
11 court has various options, which should be tailored to the injury
12 caused. United States v. Morrison, 449 U.S. 361, 365 (1981).
13 The most extreme remedy available – dismissal with prejudice – is
14 not appropriate here. Such relief is only appropriate where
15 there is “a clear basis in fact and law for doing so.” Isgro,
16 974 F.2d at 1097; see also Chapman, 524 F.3d at 1085 (explaining
17 that improper dismissal of “an indictment with prejudice
18 encroaches on the prosecutor's charging authority” (internal
19 quotation marks omitted)). Defendant has not made a showing that
20 the Sixth Amendment violation here, while serious, merits such a
21 drastic response.

22 In the alternative, the Government suggests that the Court
23 permit defense counsel to withdraw, which is the “common remedy
24 for where there is a conflict of interest between a counsel and
25 his client.” Opp'n at 6. The Government's suggestion fails to
26 address, however, how the Court might find alternative counsel
27 for Defendant given the severe funding lapse discussed above.
28 Requiring or allowing counsel to withdraw would only result in

1 Defendant being left involuntarily *in propria persona* with a
2 looming trial date. Thus, granting defense counsel's request to
3 withdraw is not a viable remedy.

4 The other two remedies suggested by the parties are to stay
5 the case without releasing the Defendant from custody or staying
6 the case and releasing the Defendant from custody. The Defendant
7 opposes the former and the Government opposes the latter.
8 Moreover, neither remedy fully addresses the underlying
9 constitutional violation.

10 Ultimately, the Court finds that dismissal without prejudice
11 is the appropriate remedy for the constitutional violation at
12 issue here. As discussed above, Defendant has unquestionably
13 suffered a violation of his constitutional right to counsel and
14 faced substantial prejudice as a result, warranting this result.
15 Dismissal without prejudice provides functionally the same level
16 of relief for Defendant as a stay and release from custody while
17 providing an opportunity for this prosecution to continue, albeit
18 possibly in a different venue. As both parties must acknowledge,
19 Defendant can still be prosecuted in state court where his
20 constitutional right to adequate counsel would not be impaired.
21 Mot. Dismiss at 4-5. Dismissal without prejudice also gives the
22 United States the opportunity to refile in federal court once
23 funding is available for CJA counsel and Defendant is again
24 afforded his Sixth Amendment Right to Counsel. Finally, as
25 opposed to a stay, dismissal also ensures no conflict arises
26 between Defendant's speedy trial rights and the remedy granted by
27 the Court. Given these considerations, the Court concludes that
28 "no lesser remedial action is available," Chapman, 524 F.3d at

1 1087, i.e., no lesser remedy fully addresses the damages caused
2 by the government's misconduct.

3 To further ensure that the remedy is as closely tailored to
4 the injury suffered and ensure it does not unnecessarily impede
5 competing interests, the Court administratively stays this Order
6 until November 21 at 5:00 p.m. This will permit the Government
7 to seek appellate review of this Order, should it decide to do so
8 and/or file a motion for reconsideration should the current
9 Government shut down end and adequate funding and resources to
10 prepare for trial be provided to Defendant in a timely manner.

11 **V. ORDER**

12 For the reasons set forth above, Defendant's Motion to
13 Dismiss (ECF No. 23) is GRANTED. The Indictment (ECF No. 1) in
14 this matter is hereby DISMISSED WITHOUT PREJUDICE.

15 IT IS FURTHER ORDERED that this Order is administratively
16 stayed until November 21, 2025.

17 IT IS SO ORDERED.

18 Dated: November 12, 2025

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21 JOHN A. MENDEZ,
22 SENIOR UNITED STATES DISTRICT JUDGE
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