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8TH JUDICIAL DIST. COURT  
TAOS COUNTY, NM ON

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DISTRICT COURT

**EIGHTH JUDICIAL DISTRICT COURT  
STATE OF NEW MEXICO  
COUNTY OF TAOS**

**STATE OF NEW MEXICO,**

**Plaintiff,**

**vs.**

**No. D-820-CR-2018-00167  
Hon. Jeff McElroy**

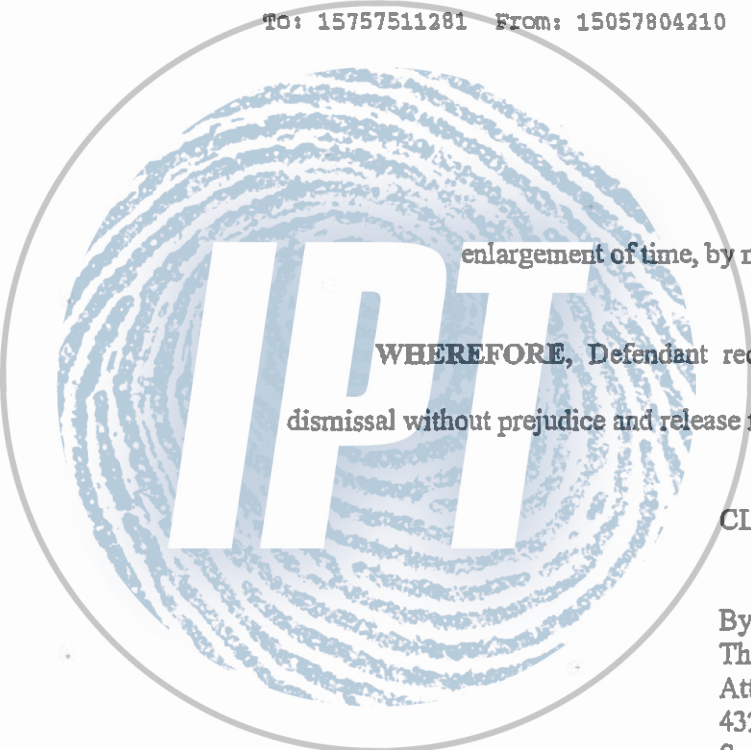
**SIRAJ IBN WAHHAJ,**

**Defendant.**

**MOTION TO DISMISS**

COMES NOW, the Defendant, Siraj Ibn Wahhaj, by and through his attorney, Thomas M. Clark, and moves this Court to dismiss the above styled and numbered cause. As grounds therefore, Defendant shows as follows:

1. Defendant had a first appearance on the instant charges on August 8, 2018 where Judge Backus ordered that Wahhaj be held without bond pending the government's motion for a no-bond hold;
2. Defendant has been in custody since August 8, 2018;
3. 5-302 NMRA (A)(1) demands that a preliminary hearing be held no later than (10) days after the first appearance if the defendant is in custody;
4. No such preliminary hearing has been held. Under the 10-day rule, the final day to hold the preliminary hearing was August 22, 2018.
5. 5-302 NMRA (A)(3) demands that, if a preliminary hearing is not held, the case against defendant is to be dismissed without prejudice and the defendant shall be discharged;
6. No "extraordinary circumstances" exist that would justify an extension or enlargement under 5-302(A)(2) NMRA. Such extraordinary circumstances have been specifically delineated by caselaw to include such issues as: death or illness of a Judge or counsel. Further, the government has sought no such extension or



enlargement of time, by motion to this Court, for holding a preliminary hearing.

WHEREFORE, Defendant requests the remedy afforded by New Mexico Law; dismissal without prejudice and release from custody.

CLARK, JONES & PENNINGTON, LLC

By: 

Thomas M. Clark  
Attorney for Defendant  
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(505) 820-1825

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing pleading was mailed to the Office of the District Attorney on this 23 day of August, 2018.

  
Thomas M. Clark