

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

PAUL NGUYEN,

Defendant.

Case No. 25-mj-00170 (GMH)

**GOVERNMENT’S REPLY IN SUPPORT OF MOTION TO DISMISS
COMPLAINT WITHOUT PREJUDICE**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, submits this reply in support of its Motion to Dismiss Complaint Without Prejudice. (ECF No. 10). Dismissal with prejudice is not warranted where, as here, the government did not seek dismissal for tactical gain or to harass the defendant by re-bringing the case under more advantageous circumstances. Rather, the Government’s dismissal was made in good faith and dismissing the case without prejudice is in the interests of justice.

A. The Relevant Legal Standard

Federal Rule of Criminal Procedure 48(a) provides that the “government may, with leave of court, dismiss an indictment, information or complaint.” The Supreme Court has explained that the “‘principle object of the leave of court requirement’ has been understood to be a narrow one — ‘to protect a defendant against prosecutorial harassment . . . when the [g]overnment moves to dismiss an indictment over the defendant’s objection.’” *United States v. Fokker Services B.V.*, 818 F.3d 733, 742 (D.C. Cir. 2016) (quoting *Rinaldi v. United States*, 434 U.S. 22, 29 n.15 (1977)). Therefore, a court reviews the government’s motion under Rule 48(a) “primarily to guard against the prospect that dismissal is part of a scheme of prosecutorial harassment of the defendant through repeated efforts to bring—and then dismiss—charges.” *Fokker Services*, 818 F.3d at 742.

As a general matter, Rule 48(a) only allows the court to reject the government’s motion to dismiss without prejudice in “exceptional” cases due to the “strong presumption in favor of a no prejudice dismissal[.]” *United States v. Borges*, 153 F. Supp. 3d 216, 219 (D.D.C. 2015). *See also, e.g., United States v. Trump*, 757 F. Supp. 3d 82, 83 (D.D.C. 2024) (“When a prosecutor moves to dismiss an indictment without prejudice, there is a strong presumption in favor of that course. A court may override the presumption only when dismissal without prejudice would result in harassment of the defendant or would otherwise be contrary to the manifest public interest.”) (citations and quotation marks omitted).

The question of whether to dismiss a case pursuant to Rule 48(a) with, or without, prejudice turns on whether the dismissal itself is being sought for an improper purpose, such as “to gain a tactical advantage” or to bring the case again under more advantageous circumstances. *United States v. Pitts*, 331 F.R.D. 199, 203 (D.D.C. 2019); *see also Rinaldi*, 434 U.S. at 30 (noting that “[t]he salient issue” in deciding whether to permit termination of prosecution under Fed. R. Crim. P. 48(a) is whether the government’s “efforts to terminate the prosecution [] were tainted with impropriety”).

“The key factor in a determination of prosecutorial harassment is the propriety or impropriety of the [g]overnment’s efforts to terminate the prosecution—the good faith or lack of good faith of the [g]overnment in moving to dismiss.” *United States v. Salinas*, 693 F.2d 348, 351 (5th Cir. 1982). *See also United States v. Hayden*, 860 F.2d 1483, 1487 (9th Cir. 1988) (“A fundamental consideration in addressing the propriety of a prosecutor’s [Fed. R. Crim. P. 48(a)] dismissal motion is whether the motion is made in ‘good faith.’”). “It is only when those considerations overcome the presumption that the public interest favors a dismissal without

prejudice, that a dismissal shall be ordered with prejudice.” *United States v. Madzarac*, 678 F. Supp. 3d 42, 48 (D.D.C. 2023).

Where the government has sought dismissal without prejudice, courts instead have granted dismissal with prejudice only where the government has sought to dismiss a case to obtain a tactical advantage, harass the defendant, or otherwise rebring the case at a more advantageous time for the government. For example, in *Pitts*, 331 F.R.D. at 204, the court denied the government’s request to dismiss without prejudice where the government failed to timely seek DNA testing and sought to salvage the case by dismissing without prejudice with hopes to rebring the prosecution once DNA test results were received. Specifically, the government advised the court that it was seeking dismissal “without prejudice in order to get the [DNA] tests done.” *Id.* at 202. Because the purpose of the dismissal without prejudice “was clearly tactical, to better position the government to try this case, which is clearly prohibited under D.C. Circuit precedent,” the court dismissed the case with prejudice. *Id.* at 205.

In *United States v. Poindexter*, 719 F. Supp. 6, 10 (D.D.C. 1989), the court explained that dismissal with prejudice is warranted when allowing reprosecution “would result in harassment of the defendant or would otherwise be contrary to the manifest public interest.” In *Poindexter*, the court declined to dismiss two counts of an indictment without prejudice where the government was seeking to gain a tactical advantage by preserving the possibility of reprosecuting the defendant at a time when he would not need access to classified documents. *Id.* at 12 n.18. Similarly, in *United States v. Fields*, 475 F. Supp. 903, 905-08 (D.D.C. 1979), the court dismissed an indictment with prejudice where the government indicted the defendant in order to coerce her cooperation in another case despite knowing that its key witness—without whom the government could not prosecute the defendant—was not credible. In *United States v. Derr*, 726 F.2d 617, 619

(10th Cir. 1984), the Tenth Circuit held that dismissal with prejudice was warranted where the government sought dismissal solely because it was dissatisfied with the state of the investigation and charges and the defendant was prepared to proceed to trial. And in *Salinas*, 693 F.2d at 353, the Fifth Circuit dismissed an indictment with prejudice on grounds that the government was engaging in harassment and improper maneuvering, when the government sought to dismiss a case on the first day of trial because it was unhappy with the jurors who had been selected.

B. Argument

The present case is readily distinguishable from the cases in which exceptional circumstances were found to warrant a dismissal with prejudice. Here, the government represented at the last hearing that it does not intend to move forward with charges against Mr. Nguyen in federal or Superior Court based on current evidence. This representation is the very definition of good faith—the prosecution took quick action to seek dismissal of a case and was candid with the Court and the defense about its intentions. Because the dismissal in this case is neither being requested in bad faith nor to harass the defendant, and because the government has not sought dismissal to obtain a tactical advantage or otherwise rebring the case at a more advantageous time, dismissal with prejudice is not appropriate.

Conclusion

For the aforementioned reasons, the Court should GRANT the government's motion to dismiss the criminal complaint in this case without prejudice.

Respectfully submitted,

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