

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal No. 2017-17
	)	
	)	
CALVIN BENJAMIN, DEAN THOMPSON,	)	
STEPHEN BERNIER,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

ATTORNEYS:

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United States Attorney's Office
St. Thomas, U.S.V.I.
For the United States of America,

Omodare Jupiter, FPD
Brendan A. Hurson, AAFP
Office of the Federal Public Defender
St. Thomas, U.S.V.I.
For Calvin Benjamin,

Alex Omar Rosa-Ambert
Rosa-Ambert Law Offices
San Juan, PR
For Dean Thompson,

Darren John-Baptiste
St. Thomas, U.S.V.I.
For Stephen Bernier.

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ORDER

GÓMEZ, J.

Before the Court is the motion of the United States to dismiss the Superseding Indictment as to Dean Thompson ("Thompson").

On May 18, 2017, the Grand Jury returned a two-count Indictment charging Thompson with conspiracy to possess with intent to distribute narcotics in violation of 21 U.S.C. § 846 and possession with intent to distribute narcotics in violation of 21 U.S.C. § 841(a)(1). On July 27, 2017, the Grand Jury returned a four-count Superseding Indictment charging Thompson with conspiracy to possess with intent to distribute narcotics in violation of 21 U.S.C. § 846; possession with intent to distribute narcotics in violation of 21 U.S.C. § 841(a)(1); federal use of communication facility to facilitate a felony in violation of 21 U.S.C. § 843(b); and violation of the Travel Act, 18 U.S.C. § 1952(a)(3).

Federal Rule of Criminal Procedure 48(a) ("Rule 48") provides that, before a trial commences, "[t]he government may, with leave of court, dismiss an indictment, information, or complaint." Fed. R. Crim. P. 48(a). The words "with leave of court" modify the common law doctrine of *nolle prosequi* and place some limits on a prosecutor's power to unilaterally

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dismiss a prosecution. *See In re Richards*, 213 F.3d 773, 777 (3d Cir. 2000). Rule 48(a), however, “does not confer unfettered discretion upon courts to resist motions to dismiss.” *Id.* Rule 48(a) is primarily intended to protect defendants from prosecutorial harassment. *See Rinaldi v. United States*, 434 U.S. 22, 31 (1977). Accordingly, the Court must exercise its limited discretion in a manner that furthers that purpose. *Id.*; *see also United States v. Cowan*, 524 F.2d 504, 513 (5th Cir. 1975) (“The exercise of [a prosecutor’s] discretion with respect to the termination of pending prosecutions should not be judicially disturbed unless clearly contrary to manifest public interest.”)

The premises considered; it is hereby

ORDERED that the motion to dismiss docketed at ECF Number 125 is **GRANTED**; it is further

ORDERED that the Superseding Indictment filed on July 27, 2017, is **DISMISSED** as to Dean Thompson; and it is further

ORDERED that the trial setting in this matter is **VACATED**.

S_____
Curtis V. Gómez
District Judge