

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) **Case No. 1:26-mj-0002**
)
 JORGE LORENZO-HERNANDEZ,)
)
 Defendant.)
)

ORDER

BEFORE THE COURT is the United States' Objections to Magistrate Judge's Report and Recommendation (ECF No. 29), filed May 15, 2026. The United States takes issue with the U.S. Magistrate Judge Emile A. Henderson III's Report and Recommendation (R&R) (ECF No. 24), entered April 20, 2026, wherein Judge Henderson recommends that the United States' motion to dismiss be granted, but that such dismissal be with prejudice. R&R at 11.

The Court conducted a de novo review of the record and has made an independent determination finding no error in the R&R.¹ As this Court noted in *United States v. Linarez-Lugo*, Criminal No. 2025-cr-0006, 2026 U.S. Dist. LEXIS 27186 (D.V.I. Feb. 10, 2026), “[n]otwithstanding the significant limitations on a court's authority to deny a Rule 48(a) motion to dismiss altogether, a court retains discretion to determine whether a dismissal should be with or without prejudice.” *Id.* at *5 (quoting *United States v. Adams*, 777 F. Supp. 3d 185, 214 (S.D.N.Y. 2025) (noting that “the First, Seventh, and Tenth Circuits have either affirmed such dismissals [with prejudice under Rule 48] or otherwise endorsed the practice” and that “[n]umerous district courts have dismissed prosecutions with prejudice, even when the government seeks dismissal without it”) and citing *United States v. Erickson*, Case No.

¹ See *Hill v. Barnacle*, 655 F. App'x 142, 148 (3d Cir. 2016) (opining that the district court is not required to make separate findings or conclusions when reviewing a Magistrate Judge's report and recommendation de novo under 28 U.S.C. § 636(b)) (citing *Elmendorf Grafica, Inc. v. D.S. America, Inc.*, 48 F.3d 46, 49-50 (1st Cir. 1995) (opining that "[28 U.S.C. § 636(b)] authorizes the district court to adopt in whole as well as in part the proposed findings and recommendations of the magistrate judge. Where, as here, the magistrate judge decided on an undisputed factual record, the district court was certainly not required to rehash the magistrate judge's reasoning. The role of the magistrate judge is 'to relieve courts of unnecessary work.'" (citations omitted))).

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3:19-cr-0053-003, 2024 U.S. Dist. LEXIS 3540 at *16 (D.V.I. Jan. 8, 2024) ("If the defendant successfully rebuts the good faith presumption, the Court may deny the government's motion and dismiss the indictment with prejudice."))).

The Court finds that Magistrate Judge Henderson correctly relied upon the opinion in *Linarez-Lugo*. Despite the United States' attempt to distinguish the facts in this matter from the facts in *Linarez-Lugo*, Defendant's unavailability to proceed to trial is similarly not due to his actions, but due solely to the actions of Plaintiff. Defendant was taken into custody by an arm of the prosecutorial team. This scenario is analogous to a party intentionally destroying evidence or threatening a witness as to make that witness unavailable to testify at trial. Thus, like the *Linarez-Lugo* court, the Court deems dismissal with prejudice to be appropriate, here. 2026 U.S. Dist. LEXIS 27186, at *5.

The premises considered, it is hereby

ORDERED that the United States' Objections to Magistrate Judge's Report and Recommendation, ECF No. 29, is **OVERRULED**; it is further

ORDERED that the Magistrate Judge's Report and Recommendation, ECF No. 24, is **APPROVED and ADOPTED** as an Order of this Court as if fully set forth herein; it is further

ORDERED that the Complaint, ECF No. 1, in the above-captioned matter is **DISMISSED WITH PREJUDICE**; and it is further

ORDERED that the Clerk of Court **SHALL** remove the case from the Court's calendar and close the case.

Date: July 7, 2026

/s/ Robert A. Molloy
ROBERT A. MOLLOY
Chief Judge