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**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**
**CRIMINAL DIVISION—FELONY BRANCH**

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| **UNITED STATES OF AMERICA** | ) | **Case No. 2026 CF2 10237** |
| | ) | |
| **v.** | ) | **Judge Todd E. Edelman** |
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| **DAVID HEARN** | ) | **Motions Hearing: September 4, 2026** |
| | ) | |

**Government's Response to Defendant's Motion to Compel**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby respectfully opposes the defendant's motion to compel additional discovery. For the reasons set forth below and for any reasons set forth at a hearing on this motion, the defendant's motion should be denied.

The defendant seeks additional discovery pursuant to Rule 16 of the Superior Court Rules of Criminal Procedure despite the Court having dismissed this case with the only question being whether the case is dismissed with or without prejudice. The dismissal of the case bars defendant's entitlement to discovery.

Rule 16 provides access to documents and objects if "the item is material to preparing the defense." Super. Ct. Crim. R. 16(a)(1)(E)(i). *United States v. Armstrong*, 517 U.S. 456 (1996), is particularly instructive and dispositive of the defendant's arguments. There, the defendants sought documents, pursuant to Fed. R. Crim. P. 16 (the federal analog to the Superior Court rule),[1] to support a claim of selective prosecution. *Armstrong*, 517 U.S. at 459, 461-62. The defendants in *Armstrong* argued "that documents 'within the possession . . . of the government' that discuss the

[1] *See Buchanan v. United States*, 165 A.3d 297, 304 n.5 (D.C. 2017) ("Because Super. Ct. Crim. R. 16 is substantially the same as its federal counterpart, it is to be construed consistently with the federal rule, and we may look to relevant federal precedents for guidance." (citation and internal alterations omitted); *see also id.* at 304, 310 (quoting *Armstrong*'s interpretation of Rule 16 with approval).

Government's prosecution strategy for cocaine cases are 'material' to respondents' selective-prosecution claim." *Id.* at 462. They reasoned "that the Rule applies because any claim that 'results in nonconviction' if successful is a 'defense' for the Rule's purposes, and a successful selective-prosecution claim has that effect." *Id.* The Court rejected that argument "because [it] conclude[d] that in the context of Rule 16 'the defendant's defense' means the defendant's response to the Government's case in chief." *Id.* "While it might be argued that as a general matter, the concept of a 'defense' includes any claim that is a 'sword,' challenging the prosecution's conduct of the case, the term may encompass only the narrower class of 'shield' claims, which refute the Government's arguments that the defendant committed the crime charged." *Id.*

Similarly, in *United States v. Rashed*, 234 F.3d 1280 (D.C. Cir. 2000), the defendant sought discovery pursuant to Rule 16 to support his argument that a separate, parallel terrorism prosecution by Greek authorities was a "sham." The D.C. Circuit disagreed, holding that "[b]ecause Rashed's defense here relates not to refutation of the government's case in chief but to establishment of an independent constitutional bar to the prosecution, Rule 16(a)(1)(C) of the Fed.R.Crim.P. is inapplicable." *Id.* at 1285 (citing *Armstrong*); *see also United States v. Sanders*, 106 F.4th 455, 475 (6th Cir. 2024) (holding that for the defendant to establish an entitlement under Rule 16, "he must show that [the items are] material to *the case he intends to make at trial* . . . [t]hat is, he must establish that the *pre-trial disclosure* of the disputed evidence would enable him significantly to alter the quantum of proof in his favor" (emphases added) (internal citations and alterations omitted)); *id.* at 473 (rejecting the argument that "Rule 16(a)(1)(E)(i) allows for the disclosure of any item that can materially help [the defendant] in any way against the prosecution" because the "Supreme Court [in *Armstrong*] opted against a more expansive reading of the term 'defense,' one that would have encompassed any evidence pertaining to a claim that 'results in nonconviction'").

Much like the defendant's argument that dismissal with prejudice is required under Rule 48(a) and the due process concerns underlying the rule, "[a] selective-prosecution claim is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution." *Armstrong*, 517 U.S. at 463. Here, the compelled production of any documents cannot serve as a "shield" to the government's case-in-chief because the indictment has been dismissed and thus there is no case-in-chief to contest for which the defendant can demand discovery. For these reasons, the defendant's motion to compel must be denied.

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**ORDER**

Upon consideration of the defendant's motion to compel, it is hereby **ORDERED** that the motion is **DENIED**.

Todd E. Edelman
Associate Judge

Copies to:

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AUSA Kadian Carter

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Steven Levin, Esq.
Norman Eisman, Esq.
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