

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division**

UNITED STATES OF AMERICA	:	Case No. 2026 CF2 010237
	:	
v.	:	Hon. Todd Edelman
	:	
DAVID CARTER HEARN,	:	Motions Hearing: September 4, 2026
	:	
Defendant.	:	

DEFENDANT’S MOTION TO COMPEL

Following Defendant David Carter Hearn’s requests for additional discovery in this matter, the government moved to dismiss the case against him without prejudice. Mr. Hearn requested dismissal with prejudice, and his surreply on that question is due to be submitted to the Court no later than August 25, 2026. But the government has yet to provide all information in its possession relevant to the Court’s determination, including the “information showing that the damage was the result of a botched installation and not vandalism” that the government expressly relied upon in seeking dismissal. Gov’t’s Mot. Dismiss at 1. Accordingly, Mr. Hearn respectfully submits this Motion to Compel, requesting that the Court order the government to produce materials relevant to the pending litigation regarding whether to dismiss this case with or without prejudice, as reflected in Exhibit A.

I. BACKGROUND AND PROCEDURAL HISTORY

On July 2, 2026, the government obtained an indictment charging Mr. Hearn with a single count of destruction of property under D.C. Code § 22-303 for allegedly damaging the Lincoln Memorial Reflecting Pool on June 19, 2026. As discussed in detail in Mr. Hearn’s Response to Government’s Motion to Dismiss the Indictment, filed August 4, 2026, the government’s case

against Mr. Hearn was deeply flawed from the very beginning, motivated by political considerations rather than the evidence.

Throughout the pendency of this case, Mr. Hearn has asserted his right to discovery consistent with the U.S. Constitution, D.C. Superior Court Rules of Criminal Procedure, and related case law. In letters dated July 8, July 16, and July 27, which were transmitted to the government via email and filed on the docket in this matter, Mr. Hearn made specific requests for information from the government pursuant to D.C. Superior Court Rule of Criminal Procedure 16, *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and *Kyles v. Whitley*, 514 U.S. 419 (1995), among other authorities. At the government's request, Mr. Hearn agreed to three protective orders to facilitate the government's production of discovery. Yet the government failed to comply with a range of Mr. Hearn's requests—including for information from Mr. Hearn's own cell phone, which the government had seized on July 9, 2026.

On July 31, 2026, in advance of the September 28, 2026, trial date, the government moved to dismiss the charges against Mr. Hearn without prejudice, citing “recently-produced materials” that “significantly undermine the evidentiary basis for the indictment.” Gov't's Mot. Dismiss at 1-2. Mr. Hearn, in turn, requested dismissal with prejudice, and on August 6, 2026, the Court ordered the case dismissed, but held in abeyance the question of prejudice, subject to further briefing and argument. To resolve that question, the Court must consider “the purpose sought to be achieved by the government [through dismissal without prejudice] and its effect on the accused,” including whether such a dismissal “would result in harassment of the defendant or otherwise be contrary to the manifest public interest.” *United States v. Poindexter*, 719 F. Supp. 6, 10 (D.D.C. 1989); *see also Workman v. United States*, 255 A.3d 971, 975-80 (D.C. 2021).

Since then, Mr. Hearn has requested additional information from the government relevant to the Court's determination of whether the case should be dismissed with or without prejudice, including by letter dated August 14, 2026, and transmitted to the government via email and filed on the docket in this case. Mr. Hearn requests information that the government's own files and filings establish exist or should exist but that has not been produced to Mr. Hearn. The government consistently responded to these requests by asserting that because the case has been dismissed, it would be providing no further information or access. Mr. Hearn must therefore ask the Court to compel production of these materials. An itemized list of these discovery deficiencies is attached as Exhibit A, which was previously provided to the government as Exhibit A to the August 14, 2026, letter filed with the Court.¹

II. ARGUMENT

The missing discovery is material to Mr. Hearn's defense, including his request for dismissal with prejudice. Under Rule 16 of the D.C. Superior Court Rules of Criminal Procedure, "[u]pon defendant's request, the government must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, . . . or copies or portions of any of these items, if the item is within the government's possession, custody, or control and the item is material to preparing the defense." Super. Ct. Crim. R. 16(a)(1)(E)(i). Rule 16's requirement that requested discovery meet a "threshold showing of materiality" "is not a high one." *Tyer v. United States*, 912 A.2d 1150, 1164 (D.C. 2006) (quoting *United States v. Curtis*,

¹ In an email on August 17, 2026, the defense also inquired of the government whether it had "collected and/or conducted any testing of the concrete of the Reflecting Pool (beneath the lining)" and whether it would "be providing the defense with those samples and/or the results of any testing" and, if not, whether it would "be willing to facilitate site access for the defense to collect those samples this week." The government declined to respond or provide access, again citing dismissal of the case. The defense submits that this category of information would also be material to Mr. Hearn's defense.

755 A.2d 1011, 1014 (D.C. 2000). Indeed, Rule 16 provides broader discovery rights than the constitutional floor established in *Brady v. Maryland*, 373 U.S. 83 (1963). *Croker v. United States*, 253 A.3d 146, 154 n.19 (D.C. 2021) (“[T]he standard for materiality under Rule 16 is not as demanding as the post-trial due process standard of materiality that applies when the government has suppressed evidence favorable to the defense.”). Rather, this threshold showing “requires a presentation of ‘facts which would tend to show that the Government is in possession of information helpful to the defense.’” *Curtis*, 755 A.2d at 1015 (quoting *United States v. Santiago*, 46 F.3d 885, 894 (9th Cir. 1995)). Ultimately, “[t]he trial court has broad discretion in ruling on any discovery request under Rule 16.” *Tyer*, 912 A.2d at 1165. And in the District of Columbia, “the trial court has inherent authority, unless otherwise specifically precluded, to control the conduct of the proceedings before it, in order to ensure . . . that all parties are treated fairly, and that justice is done.” *Hicks-Bey v. United States*, 649 A.2d 569, 575 (D.C. 1994). “[C]ourts have recognized that in exercising inherent authority, a trial court should fashion its order to comply with the relevant procedural rule,” here, Rule 16. *Bilal v. United States*, 240 A.3d 20, 26 (D.C. 2020).

Although the Court dismissed the charges against Mr. Hearn, still pending before the Court is whether to dismiss the charges with or without prejudice, a decision with constitutional dimensions implicating Mr. Hearn’s due process, speedy trial, and double jeopardy rights. The government has denied Mr. Hearn’s request for discovery for which its own files and filings indicate a “relationship between the requested evidence and the issues in the case” and thus is material to Mr. Hearn. *Curtis*, 755 A.2d at 1014. That is, these documents bear on why the government dismissed the charges and, thus, whether its requested dismissal without prejudice

risks harassment or otherwise fails to serve the public interest. *See, e.g., Workman*, 255 A.3d at 975-80.²

The information requested by Mr. Hearn is relevant to the Court's assessment of the parties' respective dismissal requests. For one, Mr. Hearn requests the documents referenced in the government's own motion to dismiss. *See* Exhibit A, Category I. The government stated in its motion that "USAO-DC received 695 megabytes of additional documents from DOJ" which "indicated a rushed and flawed installation process, with repeated failures of the lining during the installation process, and extensive peeling of the lining throughout the Reflecting Pool." Gov't's Mot. Dismiss at 6. Per the government's admission, these documents "refute the government's arguments that the defendant committed the crime charged" and thus "fall squarely within" Rule 16. *Buchanan*, 165 A.3d 297, 304 (D.C. 2017) (quoting *United States v. Armstrong*, 517 U.S. 456, 462 (1996)). Yet the government declines to produce these materials to the defense.

Similarly, Mr. Hearn seeks the information underlying the Lincoln Memorial Reflecting Pool Damage Assessment dated June 30, 2026, which the government provided Defendant in discovery at Bates Numbers USAO-61 through USAO-78. *See* Exhibit A, Category IX. These documents go directly to the viability of the recently dismissed charge against Mr. Hearn as well as any future charges related to the Reflecting Pool. But the government has refused to provide them.

Each of the other categories of information sought by Mr. Hearn is likewise relevant to determining the government's purpose in seeking dismissal without prejudice, the effect on Mr. Hearn, and the public interest. *See, e.g., Poindexter*, 719 F. Supp. 6; *Workman*, 255 A.3d 971.

² The government's refusal to provide this discovery, coupled with the timing of its motion to dismiss, provides further reason to scrutinize the government's purpose in requesting dismissal, including what actions of the government would have been revealed if the government had continued with the case on the Court's trial schedule.

Categories II through VIII each relate to the weakness of the government’s case against Mr. Hearn, despite other Executive Branch officials’ statements suggesting otherwise, *see* Def.’s Suppl. Resp. (filed August 13, 2026), while Categories X through XIV shed further light on the renovation failures referenced in the government’s motion to dismiss. Mr. Hearn’s list of discovery requests was carefully compiled in response to the government’s own files and filings, so the government should readily be able to produce the requested information or indicate what information it failed to collect or preserve. Accordingly, his requests are “reasonable” and do “not unduly burden the government.” *Buchanan*, 165 A.3d at 304 (quoting *Curtis*, 755 A.2d at 1016).

III. CONCLUSION

For the foregoing reasons, Mr. Hearn respectfully requests that the Court compel the government to produce the information listed in Exhibit A.

Respectfully submitted,

/s/ Mary L. Dohrmann

Mary L. Dohrmann (D.C. Bar No.
90042577)

Rosa Baum (D.C. Bar No. 90032839)

Washington Litigation Group

1717 K Street NW, Suite 1120

Washington, D.C. 20006

(202) 521-8743

mdohrmann@washingtonlitigationgroup.org

/s/ Steve Levin

Steve Levin (D.C. Bar No. 985290)

Michael R. Bromwich (D.C. Bar No.
332221)

STEPTOE LLP

1330 Connecticut Avenue, NW

Washington, DC 20036

(202) 429-3000

slevin@steptoe.com

/s/Norman L. Eisen

Norman L. Eisen (D.C. Bar No. 435051)

DEMOCRACY DEFENDERS FUND

600 Pennsylvania Ave SE, No. 15180

Washington, DC 20003

202-594-9958

norman@democracydefenders.org

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ORDER

Upon consideration of Defendant's Motion to Compel, any opposition, and the record, it is this _____ day of _____, 2026, hereby

ORDERED that the Motion is GRANTED; and it is further

ORDERED that, within _____ days of this Order, the government shall disclose to the defense information responsive to the items listed in Exhibit A to the Defendant's Motion.

Judge, Superior Court of the District of Columbia

Exhibit A
(Itemized Discovery Deficiencies)

I. All documents, records, and communications referenced in the Government’s Motion to Dismiss, including the “695 megabytes of additional documents from DOI.”

1. The complete production of the “695 megabytes of additional documents from DOI” that USAO-DC received concerning the Reflecting Pool.
2. The police reports and body-worn camera for the “roughly 10 individuals associated with the Reflecting Pool” that USPP provided to USAO-DC, and the reports and body-worn camera for the additional vandalism incidents at the Reflecting Pool and other monuments that USPP disclosed to USAO-DC only after the indictment.
3. A complete list of the individuals who attended the July 1, 2026 meeting at the Reflecting Pool among United States Attorney Pirro, senior USAO-DC supervisors, and DOI employees, including NPS and USPP personnel, and any notes or reports generated as a result of that meeting.
4. All photographs, including those identified by any “Quality Control inspector,” including photographs of “blistering,” and all records of the remediation of that blistering.
5. Records of the “final inspection” completed on June 9, 2026.
6. All emails involving “an NPS engineer” and “other NPS and DOI personnel” detailing failures of the Reflecting Pool on June 11, 2026 or any other day, including the June 11, 2026 12:00 p.m. email, with all attachments, photographs, recipients, and responses.
7. The identity and qualifications of the NPS engineer who authored that email.
8. The findings of BCS Construction Engineering, including the complete report of the July 20, 2026 inspection, with all photographs and all findings concerning the coating failures at Bays 04, 06, 07 and 09 and the application of XP bonding agent.
9. All records from the third-party inspector from Atlantic Coating Inspection.
10. The AIC remediation proposal referenced, and all records of remediation performed pursuant to it.

II. All data extracted from Mr. Hearn’s cell phone that the Government has not yet destroyed and/or deleted.

11. Production of any and all data extracted from the phone.
12. All forensic extraction reports and logs, with hash values.
13. The Application/Affidavit and Search Warrant for the device.
14. Following production of this data, the Government must destroy all data extracted from the phone, both physical and electronic, from all systems and servers, and provide a written accounting of what has been destroyed or deleted, when, from which systems and servers, and by whom.

III. DC-USAO law enforcement officer reports, notes, and communications concerning or relating to the investigation of this case.

15. All DC-USAO law enforcement officer reports, notes, and communications concerning or relating to the investigation of this case.

16. Any notes or resulting reports of the phone calls, text messages, emails, or meetings between SSA [REDACTED] or other law enforcement officers and any NPS employee (including [REDACTED]) or other witness (including [REDACTED]).

17. All communications between SSA [REDACTED] and Ms. [REDACTED] prior to July 2, 2026, when Ms. [REDACTED] talked to SSA [REDACTED] over the phone “about the events that happened on June 19th,” and all unredacted electronic communications between Ms. [REDACTED] and SSA [REDACTED].

IV. Collected evidence logs and other chain of custody information regarding videos received from any witness or items seized from any defendant joined for discovery purposes.

18. Collected evidence logs and other chain of custody information regarding videos received from any civilian witness, including “IMG0635,” “IMG0636,” and “IMG_0637” provided in discovery.

19. Property and evidence logs and chain of custody information for all items seized from any defendant joined for discovery purposes.

V. Unredacted copies of discovery related to Mr. Hearn, including identifying relevant witnesses and persons with information relevant to Mr. Hearn’s defense and ongoing briefing in this matter.

20. The individual who took the “before” photograph, metadata from the “before” photograph with EXIF/metadata intact, and any communications between [REDACTED] or other NPS employee and any law enforcement witness, including at Bates Numbers USAO-241 and USAO-242.

21. The identity of the NPS engineer referenced at Bates Number USAO-247, as well as the individual who “stated he had personally cut some of the loose liner/coating using his own knife in order to stop the peeling from continuing to get worse” and who “stated the original contractor work was not inspected before the pool was filled.”

22. Native files for every photograph produced, forensic-extraction reports, hash values, source-device and account identification, all relevant photographs from the Pixel 7a and iPhone 14, and the device communications concerning those photographs.

23. The identities of “Reporting Party-1,” “Reporting Party-2,” “Witness-1,” “Involved Person-2,” “Persona Addendum,” and “Relationship Addendum” at Bates Numbers USAO-18 through USAO-21 and the name of the individual who wrote the witness statement at Bates Number USAO-22.

24. The NPS "Crew 14" roster — all NPS employees working the pool on June 19, 2026 (including Ms. [REDACTED] and Ms. [REDACTED]), with roles and contact information, and any statements, reports, notes, and memoranda of interview of every NPS employee alleged to have observed Mr. Hearn.

VI. Complete body-worn camera data from Mr. Hearn's arrest as well as all other arrests that occurred at or near the Reflecting Pool on June 19 through June 25, 2026 involving allegations of destruction of the Reflecting Pool.

25. Every responding officer's camera, per incident; this demand includes BWC from each officer listed for each CCN.

26. With respect to the arrest of Mr. Hearn, the reports name [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. BWC should be produced for each.

27. Officer [REDACTED]'s BWC for the [REDACTED] citation (C-26-0000081879) — his own report (USAO-269/270) states "BWC was utilized during this event," yet his camera is not in the production.

28. The recordings of the thirteen additional cameras that the produced files' own embedded metadata suggest other cameras at the scene, and whose footage was not produced: for June 19, 2026 — [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]; for June 20, 2026 — [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

29. All BWC for the arrests of [REDACTED] (6/22, [REDACTED]) and [REDACTED] (6/25, [REDACTED]); none was produced for either.

30. The camera-to-officer assignment records for every camera serial appearing in or referenced by the production.

31. The digital evidence management system audit trail and case-association data for every produced clip, identifying the CCN, the recording officer, the associated defendant, and the upload, access, sharing, redaction, and modification history of each file.

32. The complete native files for all produced footage with metadata intact and hash values, together with identification of any recording that was deleted, overwritten, truncated, redacted, or never uploaded.

VII. Unredacted discovery related to other matters the Government joined for discovery.

33. Unredacted NPS Form 44-02 Complainant/Witness Statement (USAO-268) for the [REDACTED].

34. Unredacted NPS/complainant statement in the [REDACTED] packet (USAO-293).

35. Identity of "[REDACTED]" — the CAD complainant/reporting party (R-1) who reported people taking the liner (USAO-269).

36. The incident and offense reports, incident number (CCN), and charging file for [REDACTED].

VIII. All CCTV or other surveillance camera footage covering the reflecting pool basin from April 23, 2026 through the present.

37. All CCTV or other surveillance camera footage covering the Reflecting Pool basin from April 23, 2026 through the present, including from any NPS, Park Police, or partner agency mobile or fixed platform. To date no CCTV footage has been produced.

38. Without limitation, the CCTV footage that produced the video posted at <https://x.com/usparkpolicepio/status/2069922924090249321> and at <https://truthsocial.com/@realDonaldTrump/posts/117021276346508609> and at <https://www.foxnews.com/video/6399223760112>.

IX. All information concerning, relating to, underlying, and resulting in the “Lincoln Memorial Reflecting Pool Damage Assessment” dated June 30, 2026, and provided in discovery at Bates Numbers USAO-61 through USAO-78.

39. Author identity, qualifications, field notes, drafts, and any prior or subsequent versions or supplements.

40. Original photographs underlying the Damage Assessment with EXIF/metadata intact.

41. The “CMR Daily Construction Observation Report” referenced at Bates USAO-62, including the report dated June 9, 2026, and all such reports for all dates from April 23, 2026 through the present.

42. Complete cost worksheets behind the Damage Assessment, including derivation of the \$50,919 indirect total, the “8 instances” selection, unit costs, and labor rates.

43. Coping joint repair backup, including Nystrom quotes/invoices and the basis for 180-LF replacement of 6-ft modular material for localized cuts.

X. All Reflecting Pool liner material seized or otherwise collected by law enforcement or government officials, including physical production or splits, relevant chain of custody information, and disposal records if discarded.

44. All liner material removed or cut by NPS (“Location 4, Bay 4” as detailed at Bates USAO-68 as “Cut edges to prevent further damage,” and Locations 5, 6, 10, 11 and any others), including physical production or splits, chain of custody, and disposal records if discarded.

45. All liner material seized by law enforcement, including the piece(s) seized related to Incident [REDACTED]/CVB Violation Notice [REDACTED], [REDACTED]/CVB Violation Notice [REDACTED], and Case Nos. 2026 CMD 010494 and 2026 CMD 010451, including physical production or splits, chain of custody, and disposal records if discarded.

XI. All damage repair, and post-failure records associated with the Reflecting Pool.

46. All repair records from the July 2026 draining: areas repaired, methods, materials, and photographs before and after.

- 47. Any NPS/DOI/contractor failure investigation, root-cause analysis, consultant report, or testing on the coating system, and NPS internal communications about the same.
- 48. Any and all inspection information, including reports created and transmitted by Atlantic Coating Inspection.
- 49. Army Corps of Engineers testing, including samples taken and the tests that have been or will be run, and any communications directing such testing.
- 50. All communications and records created by [REDACTED] or any other NPS engineer responsible for reporting on, reviewing, or approving work conducted on the Reflecting Pool, regarding the Reflecting Pool.

XII. Reflecting Pool Renovation Contract-Related Information from 2025 through the present.

- 51. Complete executed contract 140P2026C0028 with all modifications, and full Statement of Work / specifications.
- 52. Solicitation 140P2026R0050 and the FAR 6.302-6 Justification & Approval.
- 53. All invoices, payment applications, and cost/pricing backup, including the NPS profit-margin analysis.
- 54. Warranty documents and all warranty claims/correspondence for the coating system.
- 55. “Recorded clear primer location” records referenced at Bates USAO-68, including all primer application maps/logs.
- 56. Per-layer application records: dates, times, areas, and crew, for primer, membrane, and 11-35 passes; daily production maps.
- 57. Surface preparation records: blasting method by area, abrasive type and purchase records, and spent-abrasive cleanup/disposal records.
- 58. All QA/QC records: substrate moisture testing, surface profile verification, pH, holiday testing, adhesion testing, DFT logs, environmental (temp/dew point/RH) logs, and weather holds.
- 59. Spray equipment records: reactor settings, ratio/pressure/temperature logs, calibration, and daily startup logs (Graco E-XP2 class per TDS).
- 60. NPS/CMR inspection records, punch lists, and pre-refill acceptance/substantial-completion documentation.

XIII. Reflecting Pool design information.

- 61. Contractor submittal package: TDS/SDS for every product applied — expressly including Rhino 11-35 Extreme Flex, Pipeliner 5000 11-70 PW, Rhino 405/406 primer(s), joint foam, caulk/polysulfide, bond-breaker tape, and Nystrom 3x3 coping joints.
- 62. Any Rhino Linings application guide, installation manual, or project-specific application instructions provided to AIC, including inter-layer/recoat procedures for use of 11-35 with Pipeliner 5000.

- 63. AIC/Rhino communications: technical support, field visits, warranty, and failure response; and the identity and role of any Rhino personnel on site.
- 64. Product purchase/lot records and retained samples for every lot used.
- 65. AIC applicator training/certification records (Rhino industrial program) for all crew members.
- 66. Design/detail drawings for joint treatment, perimeter/floor-wall detail, bond-breaker layout, and the 11-35 coverage plan (band and stripes).

XIV. Reflecting Pool site condition records from April 2026 through the present.

- 67. Geotechnical reports, borings, and groundwater monitoring data for the basin (2010-2012 reconstruction and any recent).
- 68. Dewatering/drain-down records for April 2026: dates, pumping, and standing-water observations before coating.
- 69. Refill records (start/finish, source) and all water treatment records: H₂O₂ dosing (concentration, quantities, locations, dates), algaecides, and nanobubbler installation and removal records.
- 70. As-built drawings for the 2010-2012 reconstruction (Louis Berger/NPS): slab, joints, and drains.
- 71. Green Water Solutions / Greenwater Services contract(s) and communications on water treatment and algae mitigation, including malfunction records.