

IN THE 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 SUPPLEMENT TO RESPONSE IN SUPPORT OF
DISMISSAL WITH PREJUDICE**

In light of recent developments bearing directly on the Court’s consideration of his request for dismissal with prejudice, Defendant David Carter Hearn respectfully submits this Supplement to his Response to the Government’s Motion to Dismiss the Indictment, filed on August 4, 2026 (“Def.’s Resp.”). In an order dated August 6, 2026, the Court dismissed the indictment against Mr. Hearn but held in abeyance the parties’ respective requests for dismissal with or without prejudice.

Meanwhile, Executive Branch officials have continued to advance the narrative—contrary to the evidence and the filings of record in this case—that Mr. Hearn vandalized the Reflecting Pool. Those public statements, together with reports that the Department of Justice is considering bringing new charges against Mr. Hearn, confirm that the risk of continued prosecutorial harassment is not speculative. The statements further underscore that dismissal with prejudice is necessary to protect Mr. Hearn from the substantial risk of renewed prosecution.

I. RELEVANCE OF THE SUPPLEMENTAL FACTS

As set forth in Mr. Hearn’s principal Response, the primary purpose of Rule 48(a)’s leave-of-court requirement is “to protect a defendant against prosecutorial harassment.” *Rinaldi v. United States*, 434 U.S. 22, 29 n. 15 (1977). Federal courts applying the analogous federal rule have

considered three factors to determine whether a case should be dismissed with prejudice: “(1) the purpose of the government’s dismissal, (2) the presence or absence of good faith, and (3) the objective effect that dismissal without prejudice would have on the defendant.” *See, e.g., United States v. Madzarac*, 678 F. Supp. 3d 42, 48 (D.D.C. 2023); *United States v. Fields*, 475 F. Supp. 903, 905 (D.D.C. 1979); *United States v. Poindexter*, 719 F. Supp. 6, 11 (D.D.C. 1989).

The D.C. Circuit has likewise recognized that Rule 48(a) assigns federal district courts “the role of guarding against abuse of prosecutorial discretion.” *United States v. Ammidown*, 497 F.2d 615, 620 (D.C. Cir. 1973). The presumption of dismissal without prejudice may be overcome when such a dismissal “would result in harassment of the defendant or would otherwise be contrary to the manifest public interest.” *Poindexter*, 719 F. Supp. at 10. The Court’s decision whether to dismiss with or without prejudice thus ultimately depends on “the purpose sought to be achieved by the government and its effect on the accused.” *Id.*

The developments described below occurred concurrently with or postdate Mr. Hearn’s Response. Each statement or act bears on the purpose behind the government’s position, its bad faith, and the risk that a without-prejudice dismissal would expose Mr. Hearn to renewed prosecution.

II. SUPPLEMENTAL FACTS

A. Senior Executive Branch Officials’ Multiple Public Statements Falsely Asserting that Mr. Hearn Vandalized the Reflecting Pool and Raising the Specter of Attempted Re-Prosecution.

In the days since the government moved to dismiss the charges against Mr. Hearn, senior Executive Branch officials have continued publicly to assert that he vandalized the Reflecting Pool, notwithstanding the U.S. Attorney’s acknowledgment that the damage resulted from

“contractor error.”¹ As noted in Mr. Hearn’s principal Response, Def’s Resp. at 9, 22, on August 3, when a reporter asked President Trump whether he had spoken to U.S. Attorney Pirro about her decision to dismiss this case, he responded, “No. Jeanine Pirro made a mistake. . . . It was vandalism.”² President Trump went on to say, “We have photographs or tapes, like moving cameras, right? We have them where people are on the side, cutting it with a box knife. Now I’m not saying I was 100% thrilled with the contractor, but the contractor was rushing . . . but in addition, there was vandalism.”³ He continued, “They took knives or cutters and they cut the materials They put their hands and they pulled it. There was also some maintenance things that we would have routinely fixed, but we had that up and it was perfect.”⁴

Later on August 3, President Trump added to his criticism of U.S. Attorney Pirro stating, “Frankly, I think she [Pirro] choked because the judge was really vicious. Instead of going after the people that did it, the judge went after her and went after her department. I guess she choked. I don’t know what the hell happened.”⁵ Further, “I was disappointed with Jeanine Pirro, really disappointed with Jeanine Pirro. She folded like an umbrella. People get away with things, and it’s a disgrace.”⁶

¹ See Government’s Motion to Dismiss Without Prejudice at 19 (filed July 31, 2026).

² President Trump Signs an Executive Order, The White House YouTube Channel, at 43:15 (Aug. 3, 2026), <https://www.youtube.com/watch?v=EtctNOj2gz4>; see also Rev Transcript, <https://www.rev.com/transcripts/executive-orders-8-03-26>.

³ *Id.* at 45:04.

⁴ *Id.* at 46:02.

⁵ *Id.* at 48:17.

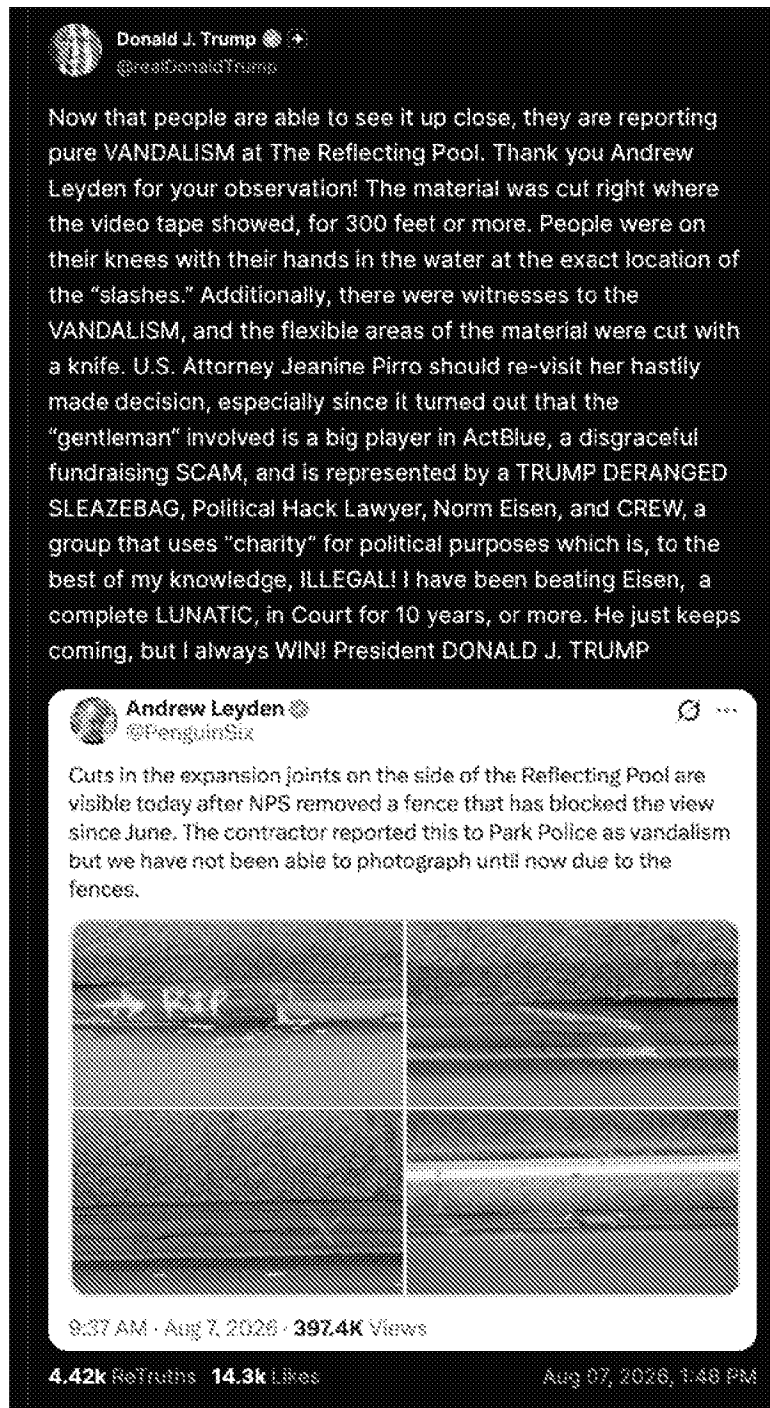
⁶ *Id.* at 53:05.

On August 6, President Trump continued to press his false version of events, contradicting the U.S. Attorney’s filings in this matter: “She said there was no vandalism. There was tremendous vandalism,” and “So, she made a terrible mistake. I don’t understand why she did such a stupid thing.”⁷ Then, on a lengthy post on his social media platform, Truth Social, he said: “they are reporting pure VANDALISM at the Reflecting Pool.”⁸ And President Trump continues to publicly urge U.S. Attorney Pirro to reopen the case, specifically stating that the U.S. Attorney should “re-visit” the dismissal decision:⁹

⁷ *Trump Again Rebukes Jeanine Pirro Over Reflecting Pool ‘Vandalism’ Case*, The Guardian (Aug. 6, 2026), [https://www.theguardian.com/us-news/2026/aug/06/trump-jeanine-pirro-reflecting-pool-vandalism#:~:text=President%20attacks%20%E2%80%98terrible%20mistake%E2%80%99%20of%20US%20attorney%2C%20who%20said%20in%20court%20filing%20dam](https://www.theguardian.com/us-news/2026/aug/06/trump-jeanine-pirro-reflecting-pool-vandalism#:~:text=President%20attacks%20%E2%80%98terrible%20mistake%E2%80%99%20of%20US%20attorney%2C%20who%20said%20in%20court%20filing%20damage%20stemmed%20from%20botched%20renovation.)

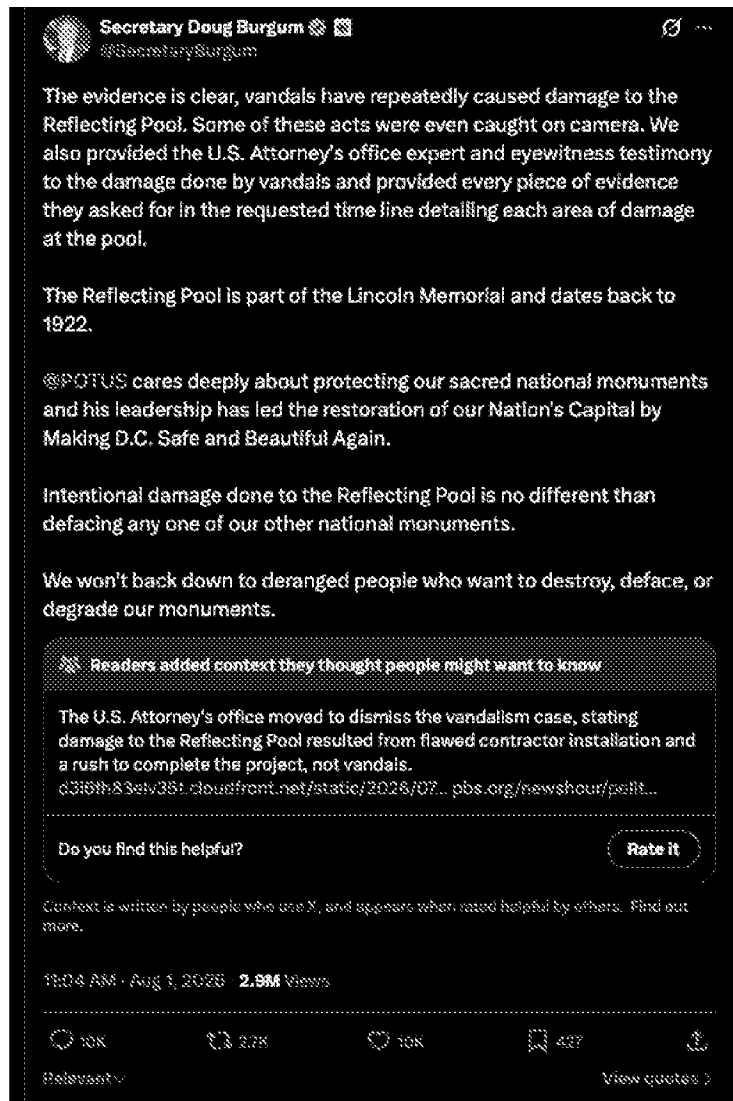
⁸ Donald J. Trump (@realDonaldTrump), Truth Social (Aug. 7, 2026) <https://truthsocial.com/@realDonaldTrump/posts/117056188782446044>.

⁹ *Id.*; see also Brie Stimson, *Trump urges Jeanine Pirro to revisit dropped Lincoln Memorial Reflecting Pool vandalism case*, Fox News (August 7, 2026), <https://www.foxnews.com/politics/trump-urges-jeanine-pirro-revisit-dropped-lincoln-memorial-reflecting-pool-vandalism-case>.



Meanwhile, Secretary of the Interior Doug Burgum echoed President Trump's claims, saying that "[t]he evidence is clear, vandals have repeatedly caused damage to the Reflecting Pool."¹⁰

¹⁰ Secretary Doug Burgum (@SecretaryBurgum), X (Aug. 1, 2026) <https://x.com/SecretaryBurgum/status/2083614772847653242> (showing the claim was so



Public reporting further indicates that White House officials have asked the Department of Justice to consider a new prosecution of Mr. Hearn, which the Justice Department is reportedly entertaining—notwithstanding its admission in this case that the evidence could not support a

demonstrably false that it was publicly corrected by a community note on the X platform); *see also* Joe Sommerlad, *Doug Burgum gets devastating community note after claiming that vandals destroyed the Reflecting Pool*, Independent (August 4, 2026), <https://www.independent.co.uk/news/world/americas/us-politics/doug-burgum-reflecting-pool-jeanine-pirro-b3027268.html>.

conviction of Mr. Hearn.¹¹ Several news sources have reported that President Trump is questioning whether Pirro should remain in her position and that he has “not made a determination” either way.¹²

These reports underscore that Mr. Hearn’s risk of re-prosecution—however meritless such a prosecution would be—is not speculative. The very officials who are publicly criticizing the dismissal are pressuring the Department to charge Mr. Hearn again, even though the government has conceded that the case against Mr. Hearn lacks factual support. Yet the continued serious threats of re-prosecution clearly support a finding of harassment warranting dismissal with prejudice.

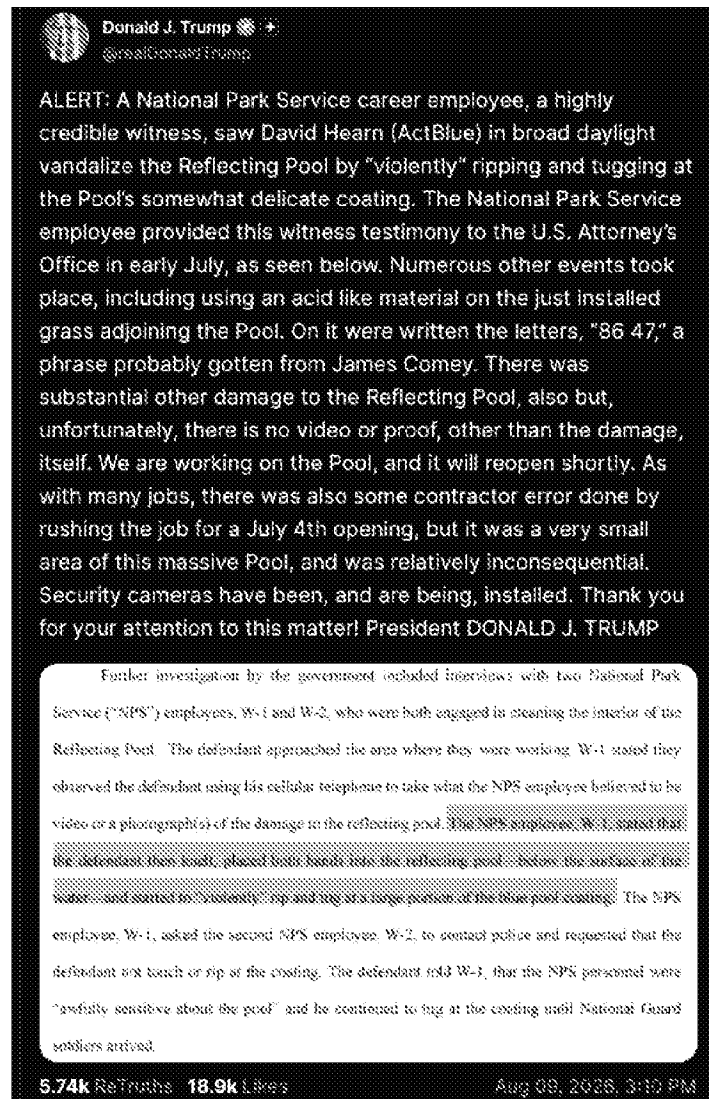
B. Executive Branch Bolstering of W-1, Contrary to the Government’s Own Evidence.

In an effort to support the vandalism accusations against Mr. Hearn, on August 9, 2026, the President posted an excerpt from the government’s Motion to Dismiss that recounts purported statements by an NPS employee identified as W-1.¹³

¹¹ Alexa Leary & Sadie Gurman, *White House Asks Justice Department to Consider New Reflecting-Pool Prosecution*, WSJ (Aug. 11, 2026), <https://www.wsj.com/us-news/law/white-house-asks-justice-department-to-consider-new-reflecting-pool-prosecution-1bbf8d8b>; Andrew Goudsward, *Trump White House Asked DOJ to Explore New Reflecting Pool Charges, Sources Say*, Reuters (Aug 11, 2026), <https://www.reuters.com/legal/government/trump-white-house-asked-doj-explore-new-reflecting-pool-charges-sources-say-2026-08-11/> (yet “another example of the White House intervening in criminal investigations, in a sharp break from decades-long Justice Department practice.”).

¹² *E.g.*, Emilio Perez Ibarguen, *Trump Hasn’t ‘Made a Determination’ on Jeanine Pirro’s Fate*, Politico (Aug. 5, 2026), <https://www.politico.com/news/2026/08/05/jeanine-pirro-donald-trump-us-attorney-01025059>.

¹³ Donald J. Trump (@realDonaldTrump), Truth Social (August 9, 2026), <https://truthsocial.com/@realDonaldTrump/posts/117067837821298859>.



While the President —without evidence—referred to W-1 as a “highly credible witness,” the evidence produced in discovery by the government itself tells a different story. For one, W-1’s handwritten statement from the date of Mr. Hearn’s arrest is contradicted by other evidence in the case. W-1’s initial statement asserts in part:

Older gentleman pullup up on his bike wearing a bike outfit purple shirt + bike shorts came up to the pool took his phone out and started taking pictures he then . . . kept tugging until the [National] Guard came up to him.¹⁴

¹⁴ This witness statement is filed contemporaneously under seal as Sealed Exhibit A to this motion.

Yet, publicly available video shows Mr. Hearn standing next to the Reflecting Pool while calmly putting on his bike glove and interacting with W-1, then walking to his bike, picking it up, and beginning to walk away—all before a group of three Guardsmen approached him.¹⁵ Accordingly, W-1’s statement that Mr. Hearn “kept tugging until the Guard came up to him” is demonstrably false.

Moreover, the government itself has provided conflicting versions of W-1’s account of her interaction with Mr. Hearn. In W-1’s initial written statement, quoted in part above, she alleged that Mr. Hearn simply “said [she] was awfully sensitive about the pool.” But U.S. Attorney Pirro—despite ethics rules to the contrary—publicly recounted a more dramatic version of events, stating that Mr. “Hearn reacted by shouting at that Park’s employee, saying that she ‘cared too much about the Reflecting Pool,’ and ‘why did she even care?’ since it ‘wasn’t her pool?’”¹⁶

The problems with the government’s representations about W-1’s story go further. The government was previously adamant that W-1 herself took the “before” photograph that purportedly showed the area of the Pool that Mr. Hearn touched without damage. The government relied on this assertion—that W-1 took the photograph herself, suggesting actual knowledge of when it was taken—in its affidavit to obtain a seizure warrant for Mr. Hearn’s phone as well as in its presentation to the grand jury that returned the indictment of Mr. Hearn.¹⁷ Only after Mr. Hearn

¹⁵ See Emily Miller (@Emilymiller) X (June 20, 2026), <https://x.com/emilymiller/status/2068470763783381356>.

¹⁶ Press Conference, Jeanine Ferris Pirro, U.S. Att’y for the District of Columbia (July 2, 2026), PBS NewsHour, <https://www.youtube.com/watch?v=pEPVRNKq3oM>.

¹⁷ Investigator M.F. testified three times that W-1 took the photograph herself. Sealed Ex. B, Grand Jury Tr. of M.F. at 4:20 (July 2, 2026) (“She said that she took this picture of the Reflecting Pool.”); *id.* at 5:10-14 (“This is the same part of the Reflecting Pool that I was talking to [W-1] about. The previous image, she took before the incident occurred. She explained to me that this picture was taken after the incident occurred.”); *id.* at 5:24-6:1 (“Q Okay. And [W-1] took both of these

repeatedly demanded metadata associated with the “before” photograph did the government finally disclose information showing that W-1 apparently lied to the DC-USAO Supervisory Special Agent investigating the case—the photograph was actually taken by an entirely different NPS employee *hours* before Mr. Hearn ever arrived at the Reflecting Pool, and then sent to W-1.¹⁸

The Administration’s efforts to bolster W-1’s credibility as proof of “vandalism” by Mr. Hearn are contradicted by the government’s own evidence and wholly improper. Given that the government conceded in its motion that the damage resulted from installation failures,¹⁹ these efforts serve no purpose other than to harass the very same person it has exonerated through its Motion to Dismiss and only further confirm that dismissal with prejudice is warranted.

III. CONCLUSION

The record in this case demonstrates a substantial and specific risk that, if the indictment is dismissed without prejudice, Mr. Hearn will face renewed charges, however meritless, driven by political pressure rather than the evidence. Such a result would force him again to defend against allegations the Department of Justice has already acknowledged lack factual support and would deny him the finality Rule 48(a) is designed to protect.

The public political pressure campaign being conducted through the Executive Branch in this case shows that the government cannot be trusted to properly exercise its prosecutorial

photographs? A Correct.”). The search warrant affidavit states, “The photograph below was taken by the NPS employee prior to the incident involving Hearn.” Sealed Ex. C, Aff. of S.R. in Supp. of Appl. for Search Warrant ¶ 12 (D.C. Super. Ct. July 8, 2026). This Grand Jury Testimony and the search warrant, including the affidavit, are filed contemporaneously under seal as Sealed Exhibits B and C to this motion.

¹⁸ See Government’s Motion to Dismiss Without Prejudice at 4 (filed July 31, 2026). To this day, the government has neither identified the NPS employee who took the photograph nor provided the detailed metadata requested associated with this “before” photograph.

¹⁹ See Government’s Motion to Dismiss Without Prejudice at 7–10, 15, 18–19 (filed July 31, 2026).

discretion. For the foregoing reasons, and for the reasons set forth in his Response to the Government's Motion to Dismiss, Mr. Hearn respectfully requests that the Court dismiss the indictment with prejudice.

Respectfully submitted,

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