

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,	:	
	:	
Defendant.	:	

**DEFENDANT’S RESPONSE TO GOVERNMENT’S MOTION TO DISMISS THE
INDICTMENT**

On Friday, July 31, 2026, the United States Attorney’s Office for the District of Columbia (USAO-DC) filed a Motion to Dismiss the indictment against defendant David Carter Hearn. In its motion, the government seeks dismissal “without prejudice,” allowing the government to resume the prosecution against Mr. Hearn at a later time, in its discretion. Mr. Hearn in no way opposes the dismissal of this matter, given the multiple grounds warranting its dismissal. But the uncertain resolution of dismissal “without prejudice”—which relies for its effectiveness on the exercise of discretion by the Executive Branch—is insufficient to provide the appropriate relief for Mr. Hearn in the extraordinary circumstances of this case.

From day one, the case against Mr. Hearn was motivated by political considerations and devoid of adequate factual support. Those political pressures have not dissipated in the mere four weeks since the government saw fit to obtain the indictment. Indeed, after the USAO-DC filed its Motion to Dismiss the Indictment, the President of the United States and the Secretary of the Interior publicly attacked the USAO-DC’s dismissal of the case. The Department of Justice (“DOJ”) has repeatedly demonstrated its willingness to seek or reinstate criminal charges to satisfy the President, irrespective of the law or facts. Fortunately, D.C. law provides a remedy for circumstances presenting this risk of harassment and bad faith: dismissal with prejudice.

Under Rule 48(a) of the Superior Court Rules of Criminal Procedure, the Court may grant a request by the government to dismiss an indictment. In doing so, the Court has a responsibility to ensure that the government's proposed dismissal does not facilitate harassment, repeated charging, or manipulation of the criminal process by the government. Accordingly, a Court may dismiss a case with prejudice, foreclosing the government's ability to reopen the case, rather than without prejudice, as the government has requested here. This case presents the exceptional facts and circumstances that warrant dismissal with prejudice.

Here, amid extraordinary political pressure and public pronouncements from President Trump demanding action, and in apparent disregard for their special duties as prosecutors, USAO-DC rushed to obtain a public felony indictment. It did so without a meaningful investigation into the central and obvious question in this case: whether Mr. Hearn caused, or even could have caused, any damage to the Reflecting Pool (hereinafter, "Pool") at all. Instead, the government relied on unsworn statements and grand jury testimony riddled with uncertainties and inconsistencies, and disregarded readily available evidence (subsequently provided directly to the prosecutors in filings by Mr. Hearn's counsel) that the liner that had been applied to the Pool was already failing because of installation defects. Defying both decency and common sense, the government proceeded to indict Mr. Hearn before it had obtained or evaluated the information necessary to establish a good-faith basis for the charge.

The government's Motion to Dismiss the indictment omits these crucial facts, but the Court need not ignore the public record. Where, as here, the government obtained an indictment through unusual haste, inadequate investigation, and a factual theory it now acknowledges was unsupported—and where the President has publicly stated that he disagrees with dismissal of the case and continues to falsely claim that the damage was caused by vandals—dismissal without

prejudice is plainly insufficient. Allowing the government to dismiss the case without foreclosing future prosecution would leave Mr. Hearn exposed to continued harassment based on the same discredited allegations. Indeed, Mr. Hearn sought to air the true facts at a speedy trial precisely so that, following his acquittal, the government would be barred by the constitutional prohibition on double jeopardy from further harassing him with related charges.

Accordingly, Mr. Hearn respectfully requests that the case be dismissed with prejudice. That serves the ends of justice because it will prevent inappropriate political considerations and influence to again cause this baseless case against Mr. Hearn to be brought. Given the facts at hand, the law requires it. Should the Court determine that additional factual development is needed to support dismissal with prejudice, the Court should grant Mr. Hearn's pending request for disclosure of the grand jury materials or, in the alternative, conduct an *in camera* review before deciding whether dismissal with prejudice is appropriate.

I. BACKGROUND AND PROCEDURAL HISTORY

On June 19, 2026, the government arrested Mr. Hearn for allegedly damaging the Pool. Less than two weeks later, 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. The speed of the government's charging decision occurred against the backdrop of an intense public campaign by President Trump and other senior Executive Branch officials to attribute highly publicized and obvious defects in the Administration's recent work on the Pool to vandalism. Within days of Mr. Hearn's arrest, the White House publicly announced that multiple individuals had been arrested

for vandalizing the Pool and promised that President Trump would ensure they were “held accountable.”¹

The rush to bring criminal charges was reflected in the grand jury proceedings that culminated in Mr. Hearn’s indictment. As an initial matter, the government’s key eyewitness was never presented to the grand jury, with the government instead presenting that witness’s unsworn statements through a third party. Def.’s Mot. for Disclosure; Sealed Ex. 2, Grand Jury Tr. of M.F. at 16 (July 2, 2026). And the government’s key witness on damages stated that the repairs at issue would have been necessary regardless of Mr. Hearn’s alleged conduct and could not identify any additional cost caused by Mr. Hearn. Def.’s Mot. for Disclosure; Sealed Ex. 1, Grand Jury Tr. of M.R. at 26, 28 (July 2, 2026). After that witness had completed his testimony, prosecutors recalled him *twenty-one minutes later* and elicited the conclusory assertion that the damage attributable to Mr. Hearn “would definitely be \$1,000 or more,” thereby presenting the statutory threshold as a settled fact. *Id.* at 29-30.

The sprint to charge Mr. Hearn mirrored the expedited timeline to complete the Pool renovations. As early as May 16, President Trump promised that the renovations would conclude by July 4.² The government likewise represented in a public filing that the National Park Service “expected to finish the project by the end of May.”³ The government subsequently failed to meet its own rushed timeline.

¹ The White House (@WhiteHouse), Post on X (June 23, 2026), <https://x.com/WhiteHouse/status/2069234054667333969>.

² Donald J. Trump (@realDonaldTrump), Truth Social (May 16, 2026), <https://truthsocial.com/@realDonaldTrump/posts/116586421680561291> (“Should be completed before the Fourth of July, our target date.”).

³ Defendants’ Memorandum of Points and Authorities in Opposition to Plaintiffs’ Emergency Motion for a Temporary Restraining Order, Preliminary Injunction, and/or Stay of Agency Action at 6, *Cultural Landscape Foundation v. U.S. Department of the Interior*, No. 1:26-cv-01593 (D.D.C. May 18, 2026).

The government’s account in its Motion to Dismiss of when USAO-DC first learned of the liner’s pervasive failures—during a defense expert’s inspection on July 17, 2026—is false, and flatly contradicted by its own records.⁴ A “Lincoln Memorial Reflecting Pool Damage Assessment,” dated June 30, 2026 (the “Damage Assessment”, hereinafter Ex. A.)—a document notably dated two days before the indictment—describes damage at numerous locations throughout the Pool. Ex. A; USAO-61–78. The Damage Assessment pointedly does *not* confirm that the area associated with Mr. Hearn was damaged as a result of vandalism, but instead describes it as a “[m]ajor failure point” and a “possible result of vandalism after initial peeling.” *Id.* It further notes that bond-breaker tape and exposed concrete were visible and that the condition did not align with the recorded clear-primer location. *Id.* The Damage Assessment thus identified preexisting peeling as part of the condition at the location associated with Mr. Hearn’s indictment before the USAO-DC obtained the indictment. The USAO-DC produced this document to Mr. Hearn’s counsel in discovery on July 10. Accordingly, the United States Attorney cannot claim she was unaware of the liner’s systemic failure when the USAO had a document in its possession that reflected that fact.

The available records further show that the USAO-DC knew of widespread liner failure before the date on which it now claims to have first learned of it. On July 13, the USAO-DC special agents photographed damage throughout the Pool, accompanied by a National Park Service (NPS) engineer who informed the agents that he had personally cut loose liner or coating with a knife to prevent further peeling. Ex. A; USAO-247. Those facts cannot be reconciled with the

⁴ See Government’s Motion to Dismiss Without Prejudice (“Gov’t Mot.”) at 6 (filed July 31, 2026).

government's assertion that the USAO-DC first became aware of extensive damage throughout the Pool only on July 17, 2062. *See* Gov't Mot. at 6.

After the media began to report issues with the Pool, senior administration officials continued to promote the theory that the damage was caused by vandalism.⁵ Yet public reporting cast substantial doubt on the government's narrative. Even before the indictment was returned, the government possessed—or had ready access to—evidence calling these claims into question.⁶ In the weeks following the indictment, multiple experts in waterproofing systems and coating

⁵ Doug Burgum, Sec'y of the Interior, interview on Fox & Friends Weekend (Fox News Channel June 27, 2026), quoted in Burgum Vows 'Full' Prosecution After Vandals Carved 350-Foot Gash into Lincoln Memorial Reflecting Pool, Fox News (June 28, 2026), <https://www.foxnews.com/media/burgum-vows-full-prosecution-after-vandals-carved-350-foot-gash-lincoln-memorial-reflecting-pool> (“[P]eople are using box cutters to do vandalism on this thing.”); Doug Burgum, Sec'y of the Interior, on This Week, in This Week Transcript 7-5-26: Special on America's 250th Anniversary, ABC News (July 5, 2026), <https://abcnews.com/Politics/week-transcript-7-5-26-special-americas-250th/story?id=134472755> (“[T]he only thing that remains to go back and fix the damage done by the vandals.”); Doug Burgum, Sec'y of the Interior, interview on State of the Union (CNN July 5, 2026), quoted in Interior Secretary Doug Burgum: Reflecting Pool Repair Involves “Multiple Gashes” by Vandals, Wash. Times (July 5, 2026), <https://www.washingtontimes.com/news/2026/jul/5/interior-secretary-doug-burgum-reflecting-pool-repair-involves/> (“It didn't peel off. There was vandalism. There was box cutters. There have been seven arrests. There were people literally trying to destroy part of a monument.”).

⁶ *See* Joshua A. Bickel, *Was the Reflecting Pool Vandalized? Experts Cast Doubt on Trump's Claims*, PBS NewsHour (Jun. 24, 2026), <https://www.pbs.org/newshour/politics/the-reflecting-pool-is-about-to-be-drained-again-heres-what-to-know> (“It is absolutely impossible that anyone could have inoculated that pool and shown an effect in literally hours. ... Absolutely a silly notion.”); Jarrett Ley, Meg Kelly, Klara Auerbach & Maura Judkis, *Reflecting Pool Peeling Probably Caused by Application Flaws, Experts Say*, Wash. Post (July 16, 2026), <https://www.washingtonpost.com/investigations/interactive/2026/07/16/reflecting-pool-peeling-likely-caused-by-application-flaws-experts-say/>; John Cardinale, Kelley Kosuda, & Reid Bolton, *Experts: Installation May Be Behind Lincoln Reflecting Pool Coating Failure*, WBAL-TV (July 18, 2026), <https://www.wbaltv.com/article/installation-details-may-explain-lincoln-memorial-reflecting-pool-problems/71807496>; Adam Kovac, *Why is the Paint Peeling Off the Lincoln Memorial Reflecting Pool, An Investigation*, Scientific American (June 22, 2026), <https://www.scientificamerican.com/article/why-the-paint-is-peeling-off-the-lincoln-memorial-reflecting-pool-experts-explain/> (Relying on engineering and pool experts to explain the pool lining failures).

applications concluded that the failure patterns were more consistent with installation or application defects than intentional cutting or vandalism. *Id.* According to the government’s July 31, 2026, filing, NPS and Department of Interior (“DOI”) personnel received an email on June 11, 2026, from an NPS engineer raising several issues regarding the peeling of the Pool’s liner. Gov’t Mot. at 9.

The USAO-DC moved to dismiss the indictment only after Mr. Hearn’s counsel exposed these deficiencies through its own filings, identifying both the weaknesses in the vandalism theory and the flaws in the government’s damages calculation.⁷ That should not have been necessary. Despite the wealth of evidence available to the government undermining its vandalism theory, the USAO-DC elected to pursue a politically motivated prosecution against Mr. Hearn, even as it now misleadingly contends that critical exculpatory evidence was unavailable to investigators at the time. The record conclusively demonstrates that the USAO-DC had no basis to pursue felony charges in the first instance, and its decision to do so is just the latest example of its failure to withstand political pressure from the President.

II. LEGAL STANDARD

A. Rule 48(A) Requires Leave of Court and is Designed, at Minimum, to Prevent Prosecutorial Harassment

Superior Court Rule of Criminal Procedure 48(a) provides that the government may dismiss a prosecution only “with leave of court.” The leave-of-court requirement is not a ministerial formality; rather, it serves as a judicial safeguard against abuse of the criminal process. As the Supreme Court has explained, the principal purpose of the leave-of-court requirement is “to

⁷ Days before filing the Motion to Dismiss, the government attempted to seal from public view one of the defense’s filings exposing the weaknesses in the government’s case, *see* Gov’t Mot. Seal Def. Filing (filed July 28, 2026), which the defense opposed, *see* Def.’s Opp’n (filed July 28, 2026). The government has seemingly abandoned that sealing effort.

protect a defendant against prosecutorial harassment, e.g., charging, dismissing, and recharging, when the government moves to dismiss an indictment over the defendant’s objection.” *Rinaldi v. United States*, 434 U.S. 22, 29 n. 15 (1977).

The District of Columbia Court of Appeals has similarly recognized that Rule 48(a) protects defendants from abuse of the charging process. In *Workman v. United States*, the court reaffirmed that the trial court bears the responsibility to prevent dismissals without prejudice that constitute harassment and relied on the longstanding principle that dismissals should not be “scandalous, corrupt, or capricious and vexatiously repetitious.” 255 A.3d 971, 975–80 (D.C. 2021) (quoting *District of Columbia v. Weams*, 208 A.2d 617, 618 (D.C. 1965)).

Accordingly, the Court retains an independent duty under Rule 48(a) to determine whether granting dismissal without prejudice would facilitate harassment, bad-faith manipulation of the charging process, or another improper use of the Court’s authority.

B. A Dismissal Without Prejudice is Inappropriate Where the Record Establishes a Genuine Risk of Harassment or Bad Faith Re-Prosecution

Dismissal with prejudice is warranted where dismissal without prejudice, and the prospect of subsequent reindictments, would constitute prosecutorial harassment. *Workman*, 255 A.3d at 975 (quoting *United States v. Kennedy*, 220 A.2d 322, 323 (D.C. 1966)) (also citing 3B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 801 (4th ed. 2021) (explaining that a court should deny a motion to dismiss without prejudice if the motion is made for “improper purpose, such as harassment of the defendant”).

As *Workman* explained, the trial court has “the responsibility . . . to prevent dismissals without prejudice” that amount to harassment. 255 A.3d at 975. Bad faith is a core consideration of that inquiry. *See United States v. Salinas*, 693 F.2d 348, 351 (5th Cir. 1982) (“The key factor in

a determination of prosecutorial harassment is ... the good faith or lack of good faith of the government in moving to dismiss.”).

Likewise, the D.C. Circuit has explained that a court reviews a Rule 48(a) motion “primarily to guard against the prospect that dismissal is part of a scheme of prosecutorial harassment of the defendant.” *United States v. Fokker Services B.V.*, 818 F.3d 733, 742 (D.C. Cir. 2016).

Where the objective circumstances show that the government pursued an indictment in bad faith, without an adequate factual basis, or in a manner that creates a genuine risk of continued harassment, the Court should not leave the defendant subject to the possibility of renewed prosecution. That is particularly true when the President of the United States has already voiced his vigorous disagreement with USAO-DC’s dismissal of the case against Mr. Hearn—saying that the U.S. Attorney “choked,” “folded like an umbrella,” and “made a mistake,” and doubling down on the false claim that the damage was caused by vandalism⁸—and has previously not hesitated to insinuate himself into cases that historically have been the exclusive province of the DOJ.

III. ARGUMENT

A. The Government Knew or Should Have Known That Damage was Due to Installation Failure, Not Vandalism

From the outset of this case, the government disregarded substantial evidence that exculpated Mr. Hearn. To be clear, this is not a case in which newly discovered evidence later weakened an initially supportable prosecution. From the outset, the evidence showed that the Pool liner was already failing and that Mr. Hearn did not cause the damage alleged in the Indictment. The government, in a manner entirely inconsistent with good faith, nevertheless charged him with

⁸ Erica L. Green, Katie Rogers, Tyler Pager, and Maggie Haberman, *Pirro Meets With Trump at the White House After He Said She “Choked” in Reflecting Pool Case*, N.Y. Times (Aug. 3, 2026), <https://www.nytimes.com/2026/08/03/us/politics/trump-pirro-reflecting-pool-vandalism.html>.

felony destruction of property. *See Pitt v. District of Columbia*, 491 F.3d 494 (D.C. Cir. 2007) (when investigators possess evidence demonstrating that the defendant was not the responsible party, proceeding with the case is evidence of lack of probable cause and malice).

a. Extensive Public Reporting

The condition of the Pool was also plainly visible. Before the indictment, the deterioration of the recently installed liner had been publicly documented through photographs, video, and media reporting.⁹ The contractor itself publicly acknowledged, before Mr. Hearn was indicted, that portions of the project required repair.¹⁰ The manufacturer publicly acknowledged reports of finish-coat separation. *Id.* And widespread media reporting documented peeling liner material at locations throughout the Pool.¹¹

On June 24, 2026, well before the Pool was drained and more than a week before the indictment, *USA Today* published a photograph of obvious damage to the liner at a location nowhere near the portion of the Pool relevant to Mr. Hearn, as depicted below.¹²

⁹ See Joshua A. Bickel, *Was the Reflecting Pool Vandalized? Experts Cast Doubt on Trump's Claims*, PBS NewsHour (June 24, 2026); Jarrett Ley et al., *Reflecting Pool Peeling Probably Caused by Application Flaws, Experts Say*, Wash. Post (July 16, 2026); John Cardinale et al., *Experts: Installation May Be Behind Lincoln Reflecting Pool Coating Failure*, WBAL-TV (July 18, 2026); Kovac, *Why Is the Paint Peeling Off the Lincoln Memorial Reflecting Pool* (“within weeks of the work’s completion, photographs and videos of floating chunks of a cerulean material that appears to have detached from the pool’s walls have gone viral.”)

¹⁰ Rhino Linings Statement Regarding the Washington DC Reflecting Pool Rehabilitation Project, Rhino Listings (Jun. 22, 2026) <https://rhinolining.com/blog/news-and-announcements/rhino-linings-statement-regarding-the-washington-dc-reflecting-pool-rehabilitation-project/>.

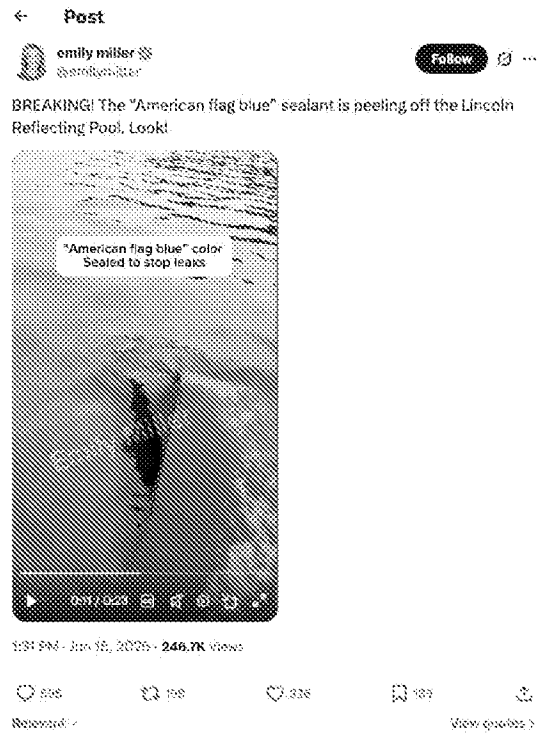
¹¹ See Joshua A. Bickel, *Was the Reflecting Pool Vandalized? Experts Cast Doubt on Trump's Claims*, PBS NewsHour (June 24, 2026); Jarrett Ley et al., *Reflecting Pool Peeling Probably Caused by Application Flaws, Experts Say*, Wash. Post (July 16, 2026); John Cardinale et al., *Experts: Installation May Be Behind Lincoln Reflecting Pool Coating Failure*, WBAL-TV (July 18, 2026); Kovac, *Why Is the Paint Peeling Off the Lincoln Memorial Reflecting Pool*.

¹² Mike Stunson & Saman Shafiq, *Fencing Near DC Reflecting Pool is For Upcoming Fireworks*, USA Today (June 24, 2026), <https://www.usatoday.com/story/news/2026/06/24/whats-the-purpose-of-fencing-near-lincoln-memorial-reflecting-pool/90673546007/>.



Moreover, a civilian who apparently met with U.S. Attorney Pirro in connection with this case,¹³ and who supplied a video of Mr. Hearn's arrest, had herself posted video of the damaged liner the day before Mr. Hearn went to the Pool.

¹³ Emily Miller, *Exclusive Judge Jeanine Pirro Investigates at Lincoln Memorial Reflecting Pool*, YouTube (July 2026), <https://www.youtube.com/shorts/XG0J-NEww6o>.



A prosecutor who was prepared to seek a felony indictment based on the supposed condition of the liner could not reasonably ignore the readily apparent evidence that the liner itself was failing. The government’s theory depended upon proving that Mr. Hearn caused specific, compensable damage to an intact liner. Yet the available evidence established that the liner was visibly failing; that material was detaching in locations unrelated to Mr. Hearn; and that repairs were required because of installation defects. The government blatantly ignored this evidence.

b. The Government’s Own Evidence

The government’s own evidence showed that the condition of the liner attributed to Mr. Hearn existed before he touched the Pool. The government possessed a photograph taken before the encounter that depicted the relevant area of liner already compromised. Gov’t Mot. at 3–4 (representing that NPS employee W-3 photographed the relevant area before the incident involving

Mr. Hearn).¹⁴ The government nevertheless distorted Mr. Hearn’s admitted act of touching a piece of already detached material into purported evidence that he maliciously caused felony-level property damage. That theory did not rest on a reliable investigation, but rather on a predetermined outcome.

The contemporaneous government records reinforce that the true nature and cause of the damage to the Pool were discoverable before the indictment. The Damage Assessment—dated two days before the grand jury returned the indictment—documented damage throughout the Pool. Ex. A; USAO-61–78. At the location associated with Mr. Hearn, the assessment did not establish the occurrence of vandalism. Instead, it described a “[m]ajor failure point” that was a “possible result of vandalism after initial peeling.” *Id.* It further recorded visible bond-breaker tape and exposed concrete, as well as conditions inconsistent with the recorded clear-primer location. *Id.*

The Damage Assessment further revealed that damage, including damage not caused by vandalism, was present throughout the Pool beginning as early as June 8, 2026. Ex. A. The report provides photographs of damage to various locations throughout the Pool, which can be visualized as follows:

¹⁴ The government had previously represented, including in sworn testimony presented to the grand jury that indicted Mr. Hearn, that the photograph was taken by a different NPS employee, but has apparently altered this incorrect factual assertion following requests for information about the photographs, including metadata, made by the defense. *See* Def.’s Mot. Rule 41(g) and Mot. Compel and accompanying Sealed Exhibit C; Def.’s Mot. for Disclosure and accompanying Sealed Exhibit 2. The government never provided the defense with complete metadata for its alleged “before” and “after” photos before moving to dismiss this case.

[illegible]

Thus, even the government’s own pre-indictment assessment recognized that the condition attributed to Mr. Hearn followed “initial peeling” and supported, at most, a tentative and tenuous attribution to vandalism while further damage was present throughout the Pool. That assessment was completely irreconcilable with the theory presented to the grand jury: that is, that the damage was caused “entirely” by vandals, including Mr. Hearn. Gov’t Mot. at 1.

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worsening. *Id.* The government’s own engineer determined that it was better to cut off the peeling sections than to let them flap around.¹⁵

c. The Government’s Motion

And contrary to its facial arguments, the government’s own Motion establishes that the relevant problem with the Pool liner predated Mr. Hearn’s June 19 encounter with the Pool. An NPS engineer documented peeling on June 11—eight days before Mr. Hearn’s arrest—and identified contractor “overspray” along the perimeter as the apparent cause. Gov’t Mot. at 9–10, 15. The engineer further reported that the perimeter area was vulnerable to peeling. *Id.* at 10. This was not a defense theory developed after indictment or a technical conclusion available only through later forensic testing. It was evidence generated by a government agency before Mr. Hearn was arrested.

The government now concedes that the liner installation was rushed and flawed, that the liner suffered from blistering, overspray, delamination, and failures of the coatings to bond, and that the resulting damage appeared throughout the Pool. *See* Gov’t Mot. at 7–10, 15, 18–19. It further concedes that, had it possessed and considered the relevant information before indictment, it would not have sought a grand-jury indictment. *Id.* at 18.

That concession does not merely establish that the government’s evidence weakened after charging. It confirms that the factual premise of the prosecution was wrong from the beginning. The government charged Mr. Hearn without evidence that he caused criminal damage, disregarded evidence that the liner had already failed, and treated a visibly defective installation as the basis for a felony accusation.

¹⁵ The Damage Assessment also states that the assessment’s author cut off the piece of the liner Mr. Hearn touched. Ex. A at 8. To date, the government has not disclosed the current location or status of the relevant piece.

B. The Government Cannot Avoid Responsibility for Its Bad-Faith Charging Decision by Blaming DOI

Contrary to the assertions in the government's Motion to Dismiss the indictment, the USAO-DC cannot isolate its office from the DOI. The two offices worked hand-in-glove, and DOI was part of the prosecution team. DOI was not merely a source of background information. It was the alleged victim; the custodian of the physical scene and the relevant records; the employer of the principal fact and damages witnesses; and the department that houses both NPS and the United States Park Police ("USPP"). The government itself acknowledges that USPP is an agency within DOI and that USAO-DC prosecutors engaged in "dozens and dozens" of communications with DOI and USPP in seeking material relating to this case. Gov't Mot. at 2. USAO-DC personnel interviewed NPS employees; U.S. Attorney Pirro and senior USAO-DC personnel visited the site with DOI, NPS, and USPP personnel; and DOI employees directed them to the location attributed to Mr. Hearn. *Id.* at 3, 5.

This was a joint investigation, not an arms-length referral from an unconnected third party. The USAO-DC expressly requested "everything" from DOI and USPP, including "any and all inculpatory and exculpatory material." *Id.* at 2. Having relied on DOI and USPP to investigate the matter, identify the alleged damage, supply witnesses, calculate loss, and provide the evidence presented to the grand jury, USAO-DC cannot now argue that DOI's purported failure to furnish its own records absolves the USAO-DC of responsibility for indicting Mr. Hearn without those records.

The July 1 site visit discussed in the government's filing confirms that the USAO-DC had reason to delay any charging decision. *Id.* at 5. One day before the indictment, U.S. Attorney Pirro and senior USAO-DC personnel visited the Pool. *Id.* The government suggests the Pool remained filled with water and that most of the Pool floor was obscured, making an assessment of the liner's

condition difficult.¹⁶ *Id.* And yet the government, with a manufactured sense of urgency, forged ahead.

The government's Motion establishes that the USAO-DC knew its initial information was at best incomplete. It received only "barebones police reports" from USPP. *Id.* at 2. It then requested reports, witness statements, photographs, body-worn-camera footage, surveillance footage, and inculpatory and exculpatory materials. *Id.* Those requests do not demonstrate that the USAO-DC had an adequate basis to indict Mr. Hearn. At a minimum, they establish that the USAO-DC knew it lacked a complete factual record and that USAO-DC knew it had an obligation to obtain the records from DOI, including exculpatory material.

Yet USAO-DC still sought the felony indictment the very next day. And the United States Attorney held an unprofessional and unethical press conference in which she wholly disregarded DC Bar and DOJ ethics rules by discussing the purported evidence, bolstering the credibility of potential witnesses, and wrongly opining on Mr. Hearn's guilt, as she has now effectively conceded.¹⁷ After the United States Attorney acknowledged there was preexisting damage to the liner, she nevertheless asserted, falsely, "We can state and prove beyond a reasonable doubt that he caused damage and that damage is over \$1,000" and reiterated falsely—three times—that Mr.

¹⁶ US Attorney Pirro told a different story to reporters on July 2, stating, "You know, I was at the reflecting pool yesterday, and I think it's very sad. Someone intentionally did a tremendous amount of damage to the pool. And you can actually, see where all the cutting is. They took a sharp object and cut for many feet along the pool." 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>; see also *Jeanine Pirro: Someone Was Intent on Doing Incredible Damage to the Reflecting Pool*, Fox News (July 3, 2026), <https://www.youtube.com/watch?v=N1KAkTz9zlQ> (US Attorney Pirro saw "a cutting of the liner of the pool").

¹⁷ 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>.

Hearn “damaged the pool.” She further insisted, falsely, “This is a case with tremendous evidence.”¹⁸

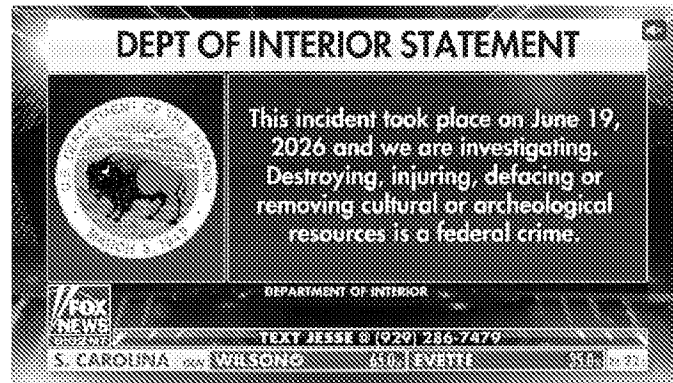
There was no legitimate need for haste. Mr. Hearn was not detained, nor could he have been so under the applicable public-safety statutes. The government identified no statute of limitations concern, witness availability issues, or other exigency requiring indictment on July 2. The government chose to indict instead of following the publicly available evidence contradicting its theory, rushing to do so without resolving the central issue in the case: whether Mr. Hearn damaged an intact liner or merely touched material that had already failed because of the defective installation. Yet part of the prosecution team—NPS and thereby DOI—had already determined exactly that.¹⁹ Such knowledge must be imputed to the prosecutors and law enforcement officers who proceeded anyway.

In a similar vein, the DOJ wholly failed to disclose any law enforcement-controlled CCTV footage of the Pool in discovery—not even for June 19, 2026. Yet DOI provided CCTV surveillance footage of the Pool from June 19, 2026, to Fox News, which aired the footage on June 23, 2026.²⁰ This clip ended with an announcement that the DOI was investigating alleged vandalism:

¹⁸ 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>.

¹⁹ The government has not provided the documents relevant to the motion to dismiss to the defense. While certainly the June 11, 2026 email establishes NPS knew of the failing lining, it is likely that specific documents the defense has repeatedly requested in discovery would reveal that knowledge far earlier.

²⁰ *Jesse Watters Primetime Obtains Exclusive Tapes of the Alleged Reflecting Pool Vandals*, Fox News (June 24, 2026), <https://www.foxnews.com/video/6399223760112>.



Jesse Watters Primetime - June 23, 2026 1:14 - [USP]

'Jesse Watters Primetime' obtains exclusive tapes of the alleged Reflecting Pool vandals

Fox News host Jesse Watters reveals exclusive footage from the U.S. Interior Department showing individuals suspected of vandalizing the Reflecting Pool on 'Jesse Watters Primetime'. Fox News host Jesse Watters shares exclusive footage from the U.S. Interior Department, capturing two suspects allegedly destroying and removing parts of the Reflecting Pool's lining on June 19, 2026. The Department confirms this incident is under investigation, emphasizing that destroying cultural or archeological resources is a federal crime, underscoring the seriousness of the alleged vandalism.

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USPP also posted a 31 second clip of the CCTV surveillance footage on X on June 24, 2026, with a Be On the Lookout (BOLO) requesting information about the identity of the individuals in the video.²¹ And President Trump posted nearly four minutes of CCTV surveillance footage of the same occurrence on August 1, 2026, writing “Look for yourselves at the VANDALISM that took place at The Reflecting Pool. The material is being cut with a knife or a box cutter, for all to see!”²² To this day, Mr. Hearn never received this CCTV footage from the government—either because the DOJ failed to obtain it or failed to provide it to the defense, despite its obvious materiality to the defense under *Brady*. 397 U.S. 643 (1970).

²¹ USPPNews (@usparkpolicepio), X (June 24, 2026), <https://x.com/usparkpolicepio/status/2069922924090249321>.

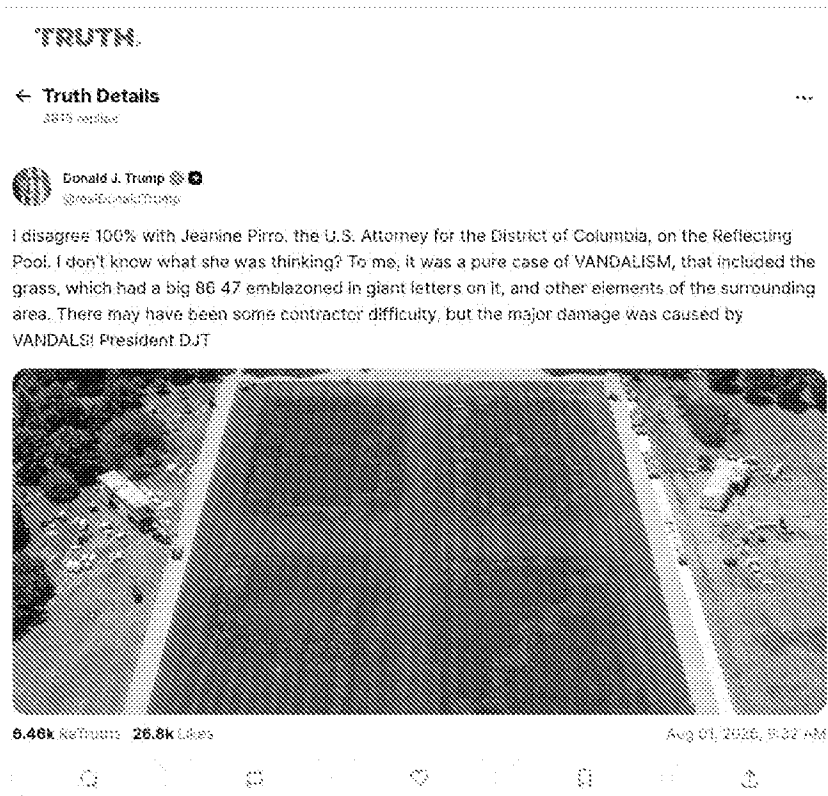
²² Donald J. Trump (@realDonaldTrump), Truth Social (August 1, 2026), <https://truthsocial.com/@realDonaldTrump/posts/117021283621973335>.

In short, the DOJ decided to shoot first and ask questions later—indicting Mr. Hearn, an innocent citizen, and only then, when forced by defense counsel, conducting the minimal investigation necessary to determine that he committed no crime. And even after the indictment, USAO-DC possessed evidence inconsistent with its claim that the case rested on discrete, vandalism-caused damage attributable to Mr. Hearn. Its current effort to assign sole fault to DOI therefore confirms, rather than excuses, the government’s bad faith: it relied on DOI to obtain the indictment, failed to investigate before charging, and now seeks to disclaim responsibility for information held by the very agencies on whose accusations and witnesses it relied.

C. There Is a High Risk of Harassment and Re-Prosecution Due to the Public and Political Conflicts Surrounding this Case

The government’s Motion to Dismiss does not provide Mr. Hearn with meaningful finality consistent with the Constitution’s speedy trial and double jeopardy protections. The extraordinary public and political circumstances surrounding this prosecution demonstrate a continuing risk of harassment and renewed prosecution. After the government acknowledged that newly produced Department of the Interior records established that the Pool damage resulted from a flawed installation rather than vandalism, the President publicly rejected the DOJ’s conclusion, stating that he disagreed “100%” with the dismissal decision and continued to insist that the damage was “a pure case of VANDALISM,” as reflected in the following post:²³

²³ Donald J. Trump (@realDonaldTrump), Truth Social (Aug. 1, 2026), <https://truthsocial.com/@realDonaldTrump/posts/117021210137447022>.



At the same time, senior officials at the Department of the Interior likewise continued to publicly assert that vandals were responsible despite the government’s own court filing concluding that the available evidence could not establish vandalism beyond a reasonable doubt. For example, Interior Secretary Doug Burgum publicly rejected the USAO-DC’s dismissal decision, asserting that DOI had provided evidence of “damage done by vandals” and stating that, “We won’t back down to deranged people who want to destroy, deface, or degrade our monuments.”²⁴

The risk of future prosecution is not merely hypothetical. Even after the government finally admitted that the evidence exculpated Mr. Hearn and moved to dismiss the case, senior Executive Branch officials publicly repudiated that determination (without any specific evidence or other grounds to do so) and continued to assert that Mr. Hearn had committed vandalism. Thus, rather

²⁴ Doug Burgum (@DougBurgum), X (Aug. 1, 2026), <https://x.com/SecretaryBurgum/status/2083614772847653242>.

than bringing the matter to a close, the dismissal has become the subject of an ongoing apparent public disagreement within the Executive Branch itself.²⁵ And public reporting and public statements reflect that President Trump does not accept Ms. Pirro's decision to dismiss the case. On August 3, President Trump criticized Ms. Pirro for "folding like an umbrella," stating "I guess she choked" in moving to dismiss the charges, and met with her in person at the White House.²⁶

The Executive Branch's recent pattern of continuing to pursue politically significant matters despite adverse legal determinations or other institutional constraints underscores the point.²⁷ Those circumstances underscore that the government's decision to dismiss has not

²⁵ Since the government's Motion to Dismiss, President Trump has made comments that suggest he is now considering removing Jeanine Pirro as the U.S. attorney for the District of Columbia. Alayna Treene, *Furious Trump is Considering Removing Pirro Over Reflecting Pool Filing, Sources Say*, CNN (Aug. 3, 2026), <https://www.cnn.com/2026/08/03/politics/jeanine-pirro-removal-reflecting-pool>; see also Scott MacFarlane (@MacFarlaneNews), X (Aug. 3, 2026), <https://x.com/MacFarlaneNews/status/2084362668060643720?s=46> ("Trump says US Attorney for DC Jeanine Pirro 'choked' on Reflecting Pool case").

²⁶ Erica L. Green, Katie Rogers, Tyler Pager, and Maggie Haberman, *Pirro Meets With Trump at the White House After He Said She "Choked" in Reflecting Pool Case*, N.Y. Times (Aug. 3, 2026), <https://www.nytimes.com/2026/08/03/us/politics/trump-pirro-reflecting-pool-vandalism.html>.

²⁷ For example, President Trump repeatedly and publicly urged the DOJ to prosecute James Comey and Letitia James, including in a series of Truth Social posts directed to Attorney General Pam Bondi calling for criminal action against both individuals. See, e.g., Donald J. Trump (@realDonaldTrump), Truth Social (Sept. 20, 2025), <https://truthsocial.com/@realDonaldTrump/posts/115239044548033727> (addressing Attorney General Bondi and stating that "Comey" and "Leticia" were "guilty as hell" and that "Justice must be served, now"); Donald J. Trump (@realDonaldTrump), Truth Social (Sept. 25, 2025), <https://trumpstruth.org/statuses/33090?> (celebrating Comey's indictment and asserting that Comey was "being held responsible for his crimes against our Nation"); *United States v. Comey*, No. 1:25-cr-00272 (E.D. Va. filed Sept. 25, 2025) (charging former FBI Director James Comey with federal offenses); *United States v. James*, No. 2:25-cr-00122-JKW (E.D. Va. filed Oct. 9, 2025) (charging New York Attorney General Letitia James with federal offenses). This Administration has a demonstrated pattern of ignoring factual and legal constraints to pursue political interests. See, e.g., *In re Contempt Proceedings Against the Department of Homeland Security*, No. 1:25-cv-00663 (D.D.C. 2025) (finding noncompliance with court orders and addressing the government's obligations to comply with judicial directives); *New York v. Trump*, No. 1:25-cv-39 (D.R.I. 2025) (addressing continued Executive Branch action notwithstanding judicial orders limiting implementation of Administration policies); see also *J.G.G. v. Trump*, 134 F.4th 917 (D.C. Cir.

eliminated the possibility that Mr. Hearn could again become the target of prosecution should political pressure yet again prevail over the facts and the evidence now reflected in the government's Motion to Dismiss.

In these unusual circumstances, dismissal without prejudice provides little protection against continued governmental harassment or renewed prosecution. Only dismissal with prejudice can provide the finality necessary to protect Mr. Hearn from being required to defend against the same unsupported allegations in the future.

D. In the Alternative, the Court Should Grant Review of the Grand-Jury Materials

If the Court should decline to dismiss the indictment with prejudice on the present record, undersigned counsel respectfully request that the Court grant Defendant's pending Motion for Disclosure of Grand Jury Minutes and Legal Instructions, or conduct an *in camera* review of the requested materials. The grand-jury record bears further on the question now before the Court: whether the government obtained Mr. Hearn's felony indictment in a manner warranting dismissal with prejudice, that is, through a rushed and misleading presentation that disregarded the absence of evidence supporting any case against Mr. Hearn.

As set forth in his Grand Jury Motion and Supplement, Mr. Hearn has already made the particularized showing required by Superior Court Criminal Rule 6(e)(3)(E)(ii). *See* Def.'s Mot. for Disclosure of Grand Jury Minutes and Legal Instructions; Def.'s Supp. to Mot. for Disclosure of Grand Jury Minutes and Legal Instructions. Specifically, the portions of the grand-jury record already disclosed provide substantial reason to doubt that the government presented a legally and factually sound basis for the charges against Mr. Hearn and raise questions as to whether its use

2025) (considering challenges arising from the government's efforts to remove individuals under the Alien Enemies Act notwithstanding ongoing judicial proceedings).

of the grand jury was otherwise improper. For one, the government’s sole damages witness, M.R., testified that the repairs identified by the government would have been necessary even before Mr. Hearn’s alleged conduct; that he could not determine whether Mr. Hearn’s conduct compromised the liner; and that he could not identify any additional repair cost attributable to Mr. Hearn. Def.’s Mot. for Disclosure at 6–7; Sealed Ex. 1 Grand Jury Tr. of M.R. at 26, 28-29 (July 2, 2026). That testimony negated the claim that Mr. Hearn caused \$1,000 or more in loss—the element that elevated the charge from a misdemeanor to a felony.

The government nevertheless obtained a felony indictment. And the later-produced portion of M.R.’s transcript raises further concerns about how it did so. As Defendant’s supplement explains, the government initially provided an incomplete transcript of M.R.’s testimony. The omitted pages reveal that, after M.R. had been excused, the government recalled him twenty-one minutes later and elicited the conclusory assertion that damage attributable to Mr. Hearn “would definitely be \$1,000 or more.” Def.’s Supp. at 1–2; Sealed Ex. 3, Updated Grand Jury Tr. of M.R. at 29–30 (July 2, 2026). That assertion was elicited after M.R. had repeatedly testified that he could not identify damage or cost attributable to Mr. Hearn.

The government did not reconcile that contradiction. Instead, after eliciting the conclusory response, the prosecutor told the grand jury: “Hopefully that kind of nailed down that specific question.” Def.’s Supp. at 1, 3; Sealed Ex. 3, Updated Grand Jury Tr. of M.R. at 30–31 (July 2, 2026). The portions of the grand jury that have been disclosed thus far thus raise a substantial concern that the government sought to cure the absence of evidence on an indispensable felony element through a pointed follow-up question and a prosecutorial comment that suggested the matter had been resolved, rather than through evidence sufficient to support the element of the offense that would have reconciled contradictory portions of the witness’s testimony.

The government's pending Motion to Dismiss makes review of those materials even more necessary. The government now concedes that the factual premise underlying the prosecution was wrong: the liner damage was attributable to a rushed and flawed installation, and the government would not have sought an indictment had it possessed and considered the relevant information before July 2. Gov't Mot. at 18–19. That concession lends particular significance to the grand jury record, and the related concerns are only deepened by the June 30 Damage Assessment. That document reflects that, before the indictment, DOI had documented widespread failures and described the area associated with Mr. Hearn as a “possible result of vandalism after initial peeling,” rather than as established vandalism. Ex. A; USAO-61–78. Review of the grand jury materials could well establish whether the government disclosed that critical qualification, accurately presented the preexisting peeling and broader failure patterns, and properly instructed the grand jury on causation and loss. This raises the question whether the government presented the grand jury with an incomplete or misleading account of the condition of the liner, the cause of its deterioration, and the absence of any reliable basis to attribute a specific amount of damage to Mr. Hearn.

Mr. Hearn has provided compelling arguments that the government may have obtained the indictment through legally deficient instructions, improper practices, or a misleading presentation—deliberate or inadvertent—concerning the central issues of causation and loss. Those matters are relevant both to whether grounds exist to challenge the indictment and to whether the Court should permit dismissal without prejudice in these circumstances, with the government having now conceded that the indictment should never have been sought.

IV. CONCLUSION

For the foregoing reasons, Defendant David Carter Hearn respectfully requests that the Court grant the government's Motion to Dismiss in part and deny it in part. Specifically, the Court should deny the government's request for dismissal without prejudice and instead dismiss the indictment with prejudice. Should the Court determine that additional factual development is needed to support dismissal with prejudice, Mr. Hearn respectfully requests that the Court grant his request for disclosure of grand-jury materials, or, alternatively, conduct *in camera* review of those materials before granting the government's Motion to Dismiss.

Respectfully submitted,

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**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,	:	
	:	
Defendant.	:	

[PROPOSED] ORDER

Upon Defendant's response to the government's motion to dismiss the indictment, the government's motion is GRANTED in part and DENIED in part and the indictment is DISMISSED WITH PREJUDICE.

Judge, Superior Court of the District of Columbia