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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.	:	

DEFENDANT'S MOTION FOR DISCLOSURE OF GRAND JURY MINUTES AND LEGAL INSTRUCTIONS

Based on a presentation by the government to a grand jury sitting in the District of Columbia, Mr. Hearn has been charged with one count of felony Destruction of Property. Counsel's review of certain transcripts from those proceedings provided by the government has revealed irregularities warranting disclosure of further information relevant to the grand jury's charging decision. Accordingly, Mr. Hearn respectfully moves, pursuant to Superior Court Rule of Criminal Procedure 6(e)(3)(E)(ii), for disclosure of (1) the legal instructions provided to the grand jury concerning the elements of the charged offense; and (2) the complete transcript or minutes of all grand-jury proceedings related to this matter. In the alternative, Mr. Hearn requests that the Court review those materials in camera.

The primary ground for the instant motion is a discrete and consequential issue: whether the grand jury received and applied legally sufficient evidence and was properly instructed on an essential element of malicious destruction of property—namely, the amount of loss caused by the defendant's alleged conduct.

In order to be charged with felony malicious destruction of property, a defendant must have caused damage in the amount of $1,000 or more. And to be charged a misdemeanor, a defendant must have caused damage amounting to some value. Here, based on the discovery provided to date, the Government's sole grand-jury witness on damages testified that the property was already damaged before Mr. Hearn allegedly touched it; that the same repairs would have been required regardless of Mr. Hearn's conduct; and that he could not quantify any loss attributable to that conduct. That testimony raises a substantial question whether the grand jury had legally sufficient evidence of the loss element necessary to support the indictment and whether the grand jury was properly instructed on that element. Additionally, other irregularities in the government's presentation of the evidence to the grand jury further call into question whether the grand jury was misled in a manner that substantially influenced the decision to indict and prejudiced Mr. Hearn.

Mr. Hearn has therefore made the showing required by Rule 6(e)(3)(E)(ii): a ground may exist to dismiss the indictment. Disclosure of the grand jury's instructions and proceedings is necessary to determine whether the grand jury was correctly instructed on causation and loss, and whether the felony-level loss element was properly submitted and supported.

I. LEGAL FRAMEWORK

A. Rule 6(e) Permits Disclosure Where a Ground May Exist to Challenge the Indictment

Grand jury proceedings are presumptively secret, but Rule 6(e)(3)(E)(ii) permits disclosure on a defendant's showing that "a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury." The rule imposes a relatively modest threshold. The defendant need not prove, before obtaining the relevant materials, that dismissal ultimately will be warranted. Rather, the defendant must identify a specific basis to believe that a matter before the grand jury may provide grounds for relief and demonstrate a particularized need for the requested materials. *See Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211, 221 (1979). That inquiry considers whether disclosure is needed to avoid a possible injustice, whether the need for disclosure outweighs the continuing need for secrecy, and whether the request is structured to cover only the materials needed. *Id.* at 222.

Mr. Hearn does not seek disclosure merely to test the weight, credibility, or sufficiency of the evidence presented to the grand jury. *Cf. Costello v. United States*, 350 U.S. 359, 363 (1956). Nor does he contend that the Government was required to present all potentially favorable evidence to the grand jury. *Cf. United States v. Williams*, 504 U.S. 36, 45–55 (1992). Instead, the motion is premised on a specific issue raised by the Government's own evidence: whether the grand jury was correctly instructed on the legal measure of the loss element that elevated this charge to a felony.

A dismissal of the underlying indictment is appropriate "if it is established that the violation substantially influenced the grand jury's decision to indict, or if there is grave doubt that the decision to indict was free from the substantial influence of such violations." *Tann v. United States*, 127 A.3d 400, 494 (D.C. App. 2015) (quoting *Bank of Nova Scotia v. United States*, 487 U.S. 250, 256–57 (1988)); s*ee Dennis v. U.S.*, 384 U.S. 855, 870 (1966) (noting "the growing realization that disclosure, rather than suppression of relevant materials ordinarily promotes the proper administration of criminal justice.").

A material error or omission in the legal instructions given to a grand jury may warrant dismissal or other appropriate relief where the error substantially influenced the decision to indict or created grave doubt that the decision was free from that influence. *United States v. Stevens*, 771 F. Supp. 2d 556, 566 (D. Md. 2011) (government's erroneous instruction to grand jury required dismissal of indictment); *United States v. Ciambrone*, 601 F.2d 616, 622 (2d Cir. 1979) (the grand jury "must lean heavily upon the United States Attorney as its investigator and legal advisor to present to it such evidence as it needs for its performance of its function and to furnish it with controlling legal principles."); *United States v. Peralta*, 763 F. Supp. 14, 19 (S.D.N.Y. 1991) (indictment dismissed where government's instructions on law were erroneous and misleading); *People v. Ferrara*, 370 N.Y.S.2d 356, 357 (Co. Ct. 1975) (failure to instruct grand jury regarding affirmative defense mandated dismissal of the indictment).

Accordingly, if the existing record provides reason to believe that the amount-of-loss element may have been submitted without proper instruction on causation or the measure of loss, or that the presentation to the grand jury was otherwise misleading, Rule 6(e)(3)(E)(ii) authorizes disclosure of the grand jury materials needed to determine whether a ground exists to dismiss the indictment.

B. Under D.C. Code § 22-303, the Amount-of-Loss is an Essential Element of the Charge

To obtain a felony indictment for malicious destruction of property under D.C. Code § 22-303, the Government must present the grand jury with the essential elements of the felony-grade offense and establish probable cause as to each element.[1] Section 22-303 grades the offense according to the amount of loss: a loss of $1,000 or more supports the felony-grade offense, while a loss below $1,000, or attempted damage to property that "had some value," supports the misdemeanor-grade offense.

Where property is allegedly damaged but not destroyed, loss attributable to a defendant "is measured by the lesser of (1) the reasonable cost of repairs necessary to restore the property to the

[1] Malicious destruction of property is defined by D.C. Code § 22-303 and charged to the finder of fact through Instruction 5.400 of the Criminal Jury Instructions for the District of Columbia. The instruction sets out the elements the Government must prove beyond a reasonable doubt. In the ordinary damage case, there are six: (1) that the defendant damaged or destroyed property; (2) that the property was not his own; (3) that he acted voluntarily and on purpose, and not by mistake or accident; (4) that he acted with malice; (5) that the loss was of a specified amount; and, where the evidence generates the issue, (6) that he acted without mitigation. D.C. Crim. Jury Instr. No. 5.400 (2026). This motion is concerned primarily with the fifth element, the loss attributed to the defendant.

condition it was in immediately before it was damaged, or (2) the fair market value of the property as it was before it was damaged." D.C. Crim. Jury Instr. No. 5.400 (2026); *accord Nichols v. United States*, 343 A.2d 336, 341-42 (D.C. 1975). Consequently, determining the condition of the property *immediately before the defendant allegedly damaged it* is essential to demonstrating loss attributable to that defendant.

In other words, under D.C. law, the loss relevant to a Destruction of Property offense is *not* calculated as the cost of remedying every defect found in the property after the alleged offense. On the contrary, it is the cost of restoring the property to its condition *immediately before* the alleged conduct occurred, to the extent the alleged conduct caused *any* compensable loss. Preexisting deterioration, defects, or repairs that would have been required in any event cannot establish the amount of loss attributable to the defendant. *Nichols*, 343 A.2d 336 at 342 (holding that the value of the property damaged or destroyed is to be measured by the reasonable cost of the repairs necessitated by the malicious conduct of the defendant); *Withers v. Wilson*, 989 A.2d 1117, 1121 (D.C. App. 2010) (holding that the damages calculation must account for the property's condition at the time of the alleged damage, including any preexisting wear and tear).

Recognizing the importance of causation to this analysis, Instruction 5.400's Comment specifically notes that a factfinder may require fact-specific guidance where the connection between the defendant's conduct and the claimed damage is disputed. D.C. Crim. Jury Instr. No. 5.400 cmt. The comment explains that, in such circumstances, "the trial court must guide the jury with instructions addressed to the specific facts." *Id.* Accordingly, a repair estimate or total project cost, standing alone, does not—and indeed, cannot—establish the amount-of-loss element. Instead, when the evidence raises a question of whether repairs were caused by the defendant's alleged conduct—as opposed to preexisting conditions or repairs that would have been required in any event—the factfinder must be instructed to determine what portion, if any, of the repair cost is attributable to the alleged offense.

II. ARGUMENT

The defense has a particularized need for the complete grand jury materials in this case. Because the felony charge depends on proof that Mr. Hearn caused at least $1,000 in legally cognizable loss, the relevant inquiry is not the cost of repairing all conditions found at the pool, but the cost of repairing damage, if any, caused by Mr. Hearn's alleged conduct. Yet, the government's sole witness concerning loss, a National Park Service official, did not identify or quantify such a loss.[2]

The witness's testimony established that the pool had substantial preexisting damage requiring repair before any alleged conduct by Mr. Hearn. According to the witness, the pool was leaking more than one million gallons of water per week; its expansion joints had exceeded their service life; and the liner already contained a rip. *See* Sealed Exhibit 1, Grand Jury Tr. of M.R. at 6–7, 19–20 (July 2, 2026). The government's witness further confirmed that repairs were already necessary to address those conditions. Exhibit 1 at 28. Those facts establish the legally relevant baseline: the condition of the property immediately before the alleged conduct.

Against that baseline, the government's witness could not identify the repairs necessary to address damage allegedly caused by Mr. Hearn. The witness testified that the repairs at issue would have been necessary regardless of Mr. Hearn's alleged conduct. Exhibit 1 at 26, 28. The government's estimated repair range—$6,000 to $15,000—was based on the size of an area, rather than on damage attributed to any particular act by Mr. Hearn. Exhibit 1 at 15, 28. And the government's witness expressly confirmed that the same estimated range of repairs, $6,000 to

[2] This witness's grand jury testimony is filed contemporaneously under seal as Sealed Exhibit 1 to this motion.

$15,000, "would still [have been] necessary before the defendant interacted with the pool." Exhibit 1 at 28.

Simply put, the government's witness could not identify *any* additional cost caused by Mr. Hearn's alleged conduct. Indeed, the witness did not even say or suggest that the alleged conduct had compromised the liner at all. Exhibit 1 at 28. When asked by a grand juror for the difference between the estimated cost of repairs before and after the alleged damage, the witness could not provide an answer. Exhibit 1. at 20. Likewise, when asked whether any additional damage Mr. Hearn might have caused would add costs beyond the prior estimate, the witness did not provide a figure or any basis to determine whether the alleged additional damage would require additional labor or time. Exhibit 1 at 28–29. In short, the government's witness never quantified—or otherwise testified to—the cost of damage allegedly attributable to Mr. Hearn.

The grand jury thus received an estimate for repairing property that, according to the government's own witness, required the same repairs before Mr. Hearn allegedly caused any damage. The grand jury received no evidence identifying the discrete portion of repair costs—if any—attributable to Mr. Hearn, much less a felony-level loss amount.

While the portions of the transcript produced by the government make clear that the grand jury heard no evidence of loss allegedly caused by Mr. Hearn, those portions do not reveal the legal standard the grand jury was instructed to apply in evaluating loss. The record raises critical questions regarding whether the grand jury was told that it could consider only the cost of repairs necessitated by Mr. Hearn's alleged conduct, measured against the condition of the property immediately beforehand, rather than the cost of remedying preexisting damage or independently necessary repairs. That question bears directly on whether the felony indictment was lawfully returned.

The grand jury transcripts disclosed to the defense thus far contain other irregularities that reflect a misleading presentation to the grand jury and a need for review of the entire grand jury record in this matter. For one, the government failed to present the widely available photograph, discussed in Mr. Hearn's Rule 41(g) Motion, that by the government's own account was taken by Mr. Hearn before he ever touched the Reflecting Pool—and, accordingly, proves that he caused no damage to the pool. In addition, the government failed to present its central witness against Mr. Hearn to the grand jury, instead submitting that witness's hearsay statements through an investigator, who emphasized that it "was not a sworn statement" that he took from the witness. *See* Sealed Exhibit 2, Grand Jury Tr. of M.F. at 16 (July 2, 2026).[3] Thus, the grand jury had no opportunity to question the witness under oath about the inconsistencies within the witness's statements and other contradictory evidence in the case, or otherwise to evaluate the witness's credibility. Together with the failures identified above regarding the amount-of-loss evidence, the disclosed transcripts raise questions as to whether the grand jury was instructed properly (or at all) as to how to evaluate witness testimony; how to determine probable cause; and its right to subpoena witnesses and other evidence for its investigation. Indeed, the presentation to the grand jury as reflected in the transcripts raises the issue of whether the government should have known it was presenting false or misleading testimony to the grand jury.

Notably, in other matters of particular interest to current Executive Branch leadership, courts have found that the government's conduct in the grand jury has included fatal improprieties, such as: improper vouching for witnesses; improperly excusing grand jurors; *ex parte* substantive communications with grand jurors; improperly testifying; and improper intervention by a

[3] This witness's grand jury testimony is filed contemporaneously under seal as Sealed Exhibit 2 to this motion.

presidentially appointed United States Attorney. *See, e.g.*, *United States v. Rabbitt*, 25-cr-693 (N.D. Ill.) (Hearing on May 21, 2026); *see also* Hannah Meisel, *'Broadview 6' Trial Canceled as Prosecutors Acknowledge Misconduct Before Grand Jury*, Capitol News Ill., May 21, 2026, https://capitolnewsillinois.com/news/broadview-6-trial-canceled-as-prosecutors-acknowledge-misconduct-before-grand-jury/.[4]

Indeed, the historic presumption of regularity afforded by the court to the Department of Justice has been thoroughly eroded by current Department leadership, including in the District of Columbia. As one judge and former federal prosecutor in the District recently stated, "[g]enerations of presidential administrations and public officials have validated this underlying premise of the presumption of regularity," but "[i]n just six months, the President of the United States may have forfeited the right to such a presumption." *Fed. Educ. Ass'n v. Trump*, 795 F. Supp. 3d 74, 90–92 (D.D.C. 2025), appeal docketed, No. 25-5303 (D.C. Cir. Aug. 20, 2025); *see also United States v. Oregon*, 2026 WL 318402, at *11 (D. Or. Feb. 5, 2026) ("The presumption of regularity that has been previously extended to [the government] that it could be taken at its word—with little doubt about its intentions and stated purposes—no longer holds.").

And the Department of Justice's misuse of grand juries has been of particular concern to the courts, including in the District. *See United States v. Stewart*, No. 25-MJ-225 (ZMF), 2025

[4] Public statements by United States Attorney Jeanine Pirro about Mr. Hearn's case further reinforce the likelihood that the grand jury received a misleading presentation that prejudiced Mr. Hearn. In a press conference delivered immediately after the indictment was returned, Ms. Pirro stated, "[a]ccording to witnesses, Hearn damaged approximately two square feet of sealant from the bottom of the pool," referring to the large patch of damaged liner that the government's own witnesses say existed before Mr. Hearn interacted with the pool. Exhibit 1 at 26, 28; Exhibit 2 at 13-14. A bar complaint against Ms. Pirro, based in part on her statements about Mr. Hearn, has been filed in the State of New York. *See* Lawyers Defending American Democracy, *Pirro Ethics Complaint* (July 21, 2026), https://ldad.org/wp-content/uploads/2026/07/Pirro-Ethics-Complaint.pdf.

WL 2754480, at *1 (D.D.C. Sept. 29, 2025); *see also United States v. Comey*, 809 F. Supp. 3d 396, 410 (E.D. Va. 2025) (government's conduct "calls into question the presumption of regularity generally associated with grand jury proceedings, and provides another genuine issue the defense may raise to challenge the manner in which the government obtained the indictment"). In September of last year, a different judge and former federal prosecutor in the District of Columbia described with concern an "irregular" grand-jury maneuver used by the United States Attorney's Office to obtain an indictment:

> A federal grand jury refused to return an indictment in this case. . . . Today, prosecutors again presented a single count federal indictment against the defendant, but this time before a Superior Court grand jury. After receiving a true bill from that local grand jury, prosecutors sought to return the federal indictment in federal court. At a minimum, this is very unseemly; more than likely, it is unlawful. Not to mention, this only deepens the growing mistrust of the actions of prosecutors. That is a sentiment that was once unthinkable, but the irregular is now the regular.

Stewart, 2025 WL 2754480, at *1.

The law does not require the courts to stand by where disclosure of grand jury materials would avoid a possible injustice. *See Douglas Oil Co.*, 441 U.S. at 222. Mr. Hearn does not ask the Court at this stage to decide whether the indictment must be dismissed; he need only demonstrate that such a ground for dismissal may exist—and the Government's own witnesses have made that showing. And because the request is limited to the legal instructions for the charged offense and the recorded grand-jury proceedings necessary to place the already-produced testimony in context, it establishes a particularized need for disclosure.

III. CONCLUSION

The amount of loss is an essential element of the offense of malicious Destruction of Property and the sole element that separates a misdemeanor from a felony punishable by up to ten years' imprisonment. The Government's only witness on that element testified that the property was already deteriorated, that the identified repairs would have been needed even without Mr. Hearn's alleged conduct, and that he could not quantify any loss caused by that conduct. Consequently, the grand jury's indictment of Mr. Hearn is hard to explain. Mr. Hearn needs to learn whether the grand jury was properly instructed that the charge required him to have caused over $1,000 in damages, when the testimony failed to establish that he caused any damage at all. So does this Court.

The witness' testimony creates a particularized basis to question whether the grand jury was correctly instructed on the elements of the offense, no less so given the government's presentation of other evidence in this matter and its course of conduct in other matters before grand juries in the District of Columbia and elsewhere. Mr. Hearn therefore respectfully requests that the Court order the limited disclosure described below or, alternatively, conduct an in camera review of the requested materials.

RELIEF REQUESTED

Mr. Hearn respectfully requests that the Court:

a. Order the government to disclose to the defense the legal instructions given to the grand jury on the elements of D.C. Code § 22-303, including any instruction on the measure of loss or value and any instruction on causation;

b. Order the government to disclose the complete grand jury minutes in this matter, including the testimony of all witnesses and any colloquy with the grand jury, to the extent not already produced; and

c. In the alternative, conduct an *in camera* inspection of the legal instructions and the complete grand jury minutes to determine whether a ground exists to dismiss or reduce the indictment.

Dated: July 27, 2026

Respectfully submitted,

/s/Mary L. Dohrmann
Mary L. Dohrmann
D.C. Bar No. 90042577
Principal
Washington Litigation Group
1717 K Street NW, Suite 1120
Washington, D.C. 20006
(202) 521-8743
mdohrmann@washingtonlitigationgroup.org

/s/ Steve Levin
D.C. Bar No. 985290
Senior Counsel
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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UNITED STATES OF AMERICA	:	**Case No. 2026 CF2 010237**
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v.	:	**Hon. Todd Edelman**
	:	
DAVID CARTER HEARN,	:	
	:	
Defendant.	:	

[PROPOSED] ORDER

Upon consideration of Defendant's Motion for Disclosure of Grand Jury Minutes and Legal Instructions, the accompanying memorandum, 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 the legal instructions given to the grand jury on the elements of D.C. Code § 22-303, including any instruction on the measure of loss or value and any instruction on causation, together with the complete grand jury minutes in this matter to the extent not already produced; or, in the alternative, shall submit those materials to the Court for in camera inspection.

____

Judge Todd Edelman
Superior Court of the District of Columbia