

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 OPPOSITION TO GOVERNMENT’S MOTION TO SEAL THE
DEFENSE’S FILING**

The government has filed a motion to “immediately remove” defendant David Carter Hearn’s submission to the Court that supplemented his Motion for Disclosure of Grand Jury Minutes and Legal Instructions.¹ Gov’t’s Mot. Seal. As grounds for its motion to seal that defense filing from the public, the government asserts that the defense has “violate[d] Rule of Criminal Procedure 6(e) [and] also the consent-protective order governing the discovery in this case.” *Id.* at 1. The government is wrong on both fronts. Moreover, sealing the defense’s supplemental filing would undermine the public’s interest in fair and open judicial proceedings. The government’s Motion should be denied.

I. The Supplement Does Not Violate Rule 6(e)

As a threshold matter, on July 9, 2026, in open court, government counsel orally moved for permission to share Rule 6(e) information with the defense, which the Court granted, as

¹ The government’s motion is somewhat ambiguous because the government refers to seeking to seal a “motion,” while the July 28, 2026, defense filing was a supplement to a motion. The government does not appear to have moved to seal the defense’s Motion for Disclosure of Grand Jury Minutes and Legal Instructions, which was filed on July 27, 2026, despite that Motion also referencing grand jury materials. The government’s objection now—and only to the Supplement—is puzzling, given that the defense’s practice in filing the Supplement unsealed, accompanied by a sealed exhibit, is consistent with its practice throughout this case, including in connection with its Rule 41(g) Motion and Motion to Compel and the related sealed exhibit.

reflected on the public docket in this case. The Court has authority to grant such permission under Rule 6(e)(3)(E)(i), which provides as follows:

The court may authorize disclosure—at a time, in a manner, and subject to any other conditions that it directs—of a grand-jury matter: (i) preliminarily to or in connection with a judicial proceeding”

Such permission is routinely granted in this and other cases in D.C. Superior Court, as well as in matters before local and federal courts around the country. Indeed, once an indictment has been issued, the grand jury’s interest in secrecy is diminished, while the defense’s interest in disclosure becomes heightened. *See, e.g., United States v. Socony–Vacuum Oil Co.*, 310 U.S. 150, 234 (1940) “[A]fter the grand jury’s functions are ended, disclosure is wholly proper where the ends of justice require it.”).

The government seeks to extend its government-specific Rule 6(e) obligations to the defense, asserting that the defense “cho[se] not to honor Rule 6(e)” when it discussed grand jury testimony in its filing. Gov’t’s Mot. Seal at 1. But the government has Rule 6(e) exactly backwards. While “an attorney for the government” is expressly prohibited from disclosing, without permission, a matter occurring before a grand jury, the defense is not. *See* Rule 6(e)(2)(B) (listing prohibited personnel, not including defense attorneys). Accordingly, there can be no *defense* Rule 6(e) violation resulting from the defense’s proper use of grand jury testimony in connection with these judicial proceedings. Moreover, an indictment has already been issued in this case, and the government sought and received permission from the Court to disclose grand jury materials to the defense. Rule 6(e) is simply inapplicable, and the government’s contrary suggestion is plainly incorrect.

II. The Supplement Does Not Violate Any Protective Order

The defense agrees that its use of grand jury materials, as well as other discovery produced by the government, is subject to the protective orders in this case. The defense consented to three protective orders, two of which are relevant to the government's assertions in its Motion: the "Sensitive Materials" protective order, and the "Grand Jury and *Jencks* Materials" protective order.² But despite the government's suggestion otherwise, those protective orders affirmatively permit the defense to reference grand jury materials in connection with this case, as the defense did in its supplemental filing.

The first of these two protective orders governs "Sensitive Materials," as designated by the government. But that protective order specifically provides, in paragraph 13, "This Order is not intended to limit the use of the covered materials in any judicial proceedings in this case." Given that this court case is a judicial proceeding, the "Sensitive Materials" protective order by its own terms permits the use of the materials in related court filings.

The second protective order governs "Grand Jury & *Jencks* Materials," when "specifically designated as being provided pursuant to this Order."³ That protective order also fails to support the government's Motion to Seal. The protective order provides as "Limitations on Use," at paragraph 4, that "the legal defense team may use grand jury and *Jencks* materials solely in connection with this case, including any post-conviction or appellate litigation, and for no other purpose, and in connection with no other proceeding, without further order of this Court." That is precisely what the defense has done in its Supplement: used government-disclosed grand jury

² The "Body-Worn Camera Materials" protective order does not apply, as no body-worn camera materials were referenced in the Supplement.

³ The government provided the new grand jury transcript in sealed Exhibit 3 to the defense without expressly designating the application of any protective order, but the defense assumes that the Grand Jury and *Jencks* Materials protective order applies.

materials, in connection with this case, as support for its request for the specific relief of further disclosure of grand jury information.

Furthermore, the second protective order provides as “Automatic Exclusions from this Order,” at paragraph 11, that: “This Order will not apply to grand jury or *Jencks* materials once those materials become part of the public record” In other words, the protective order specifically contemplates grand jury materials becoming part of the public record in this case.

The defense is of course sensitive to the privacy interests of witnesses (understanding that their names will necessarily become public at trial) and endeavored to balance them with the defense’s weighty interest in obtaining a just result in this criminal matter. Thus, in connection with its Motion for Disclosure of Grand Jury Minutes and Legal Instructions and Supplement, the defense filed the complete versions of the relevant transcripts under seal pursuant to D.C. Superior Court Rule 49.1 because the transcripts contain personal identifying information, along with other information of lesser relevance that is subject to the protective orders described above. Further sealing beyond the precautions already taken by the defense would be inconsistent with principles of public access to the courts and, accordingly, inappropriate.

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For the reasons set forth above, Mr. Hearn respectfully requests that the Court deny the government’s Motion to Seal the Defense’s Filing.

Respectfully submitted,

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