

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 SUPPLEMENT TO MOTION FOR DISCLOSURE OF GRAND JURY  
MINUTES AND LEGAL INSTRUCTIONS**

Following defendant David Carter Hearn’s submission to the Court of his Motion for Disclosure of Grand Jury Minutes and Legal Instructions, the government sent the defense a new version of the grand jury transcript for its witness on damages, “M.R.” The government’s new version of the grand jury transcript contains an additional two pages at the end of M.R.’s testimony that, according to the government, were “inadvertently left off” by the court reporter. In the additional two pages, in response to a pointed question from government counsel, M.R. summarily stated that the damage attributable to Mr. Hearn “would definitely be \$1,000 or more.” *See* Sealed Exhibit 3, Updated Grand Jury Tr. of M.R. at 30 (July 2, 2026).<sup>1</sup> After presenting this new testimony from M.R., government counsel opined to the grand jury, “Hopefully that kind of nailed down that specific question.” *Id.* at 30-31.

The newly disclosed grand jury transcript for M.R. is doubly troubling. For one, it reflects the government’s failure to provide the defense with complete information about the limited portion of the grand jury proceedings for which the government has provided discovery thus far.

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<sup>1</sup> The new version of this witness’s grand jury testimony is filed contemporaneously under seal as Sealed Exhibit 3 to the defense’s Motion for Disclosure of Grand Jury Minutes and Legal Instructions.

Moreover, it underscores the misleading nature of the government's presentation to the grand jury, further supporting the defense's Motion for Disclosure of Grand Jury Minutes and Legal Instructions.

According to the newly disclosed transcript, the government excused M.R. at 11:36 am. Exhibit 3 at 29. *Twenty-one minutes later*, at 11:57 am, the government recalled M.R. and presented the additional testimony that the damage attributable to Mr. Hearn was "definitely" more than \$1,000. *Id.* at 29-30. But by that time, the government should have known that this additional testimony was likely false or misleading. Just minutes before he was excused by government counsel at 11:36 am, M.R. had given testimony establishing that no specific amount of damage was attributable to Mr. Hearn.

The record is replete with grand-juror questioning that established that M.R. could not assign a dollar amount of damage to the alleged conduct of Mr. Hearn. During M.R.'s initial grand jury testimony, a grand juror asked him, "In your professional opinion, I guess, do you think the repairs that you mentioned would still be necessary . . . for damage . . . before the defendant interacted with the pool?" *Id.* at 26. M.R. responded to this question, "Yes." *Id.* Shortly after that, a grand juror asked M.R., "What was the impact of [Mr. Hearn's] involvement, or this damage, on your timeline and your activities on the way?" *Id.* at 28. M.R. responded, "I don't think . . . one is dependent on the other. We are going to have to repair this as soon as possible date we can [sic], based on the fact that we now have a compromised lining." *Id.* A grand juror followed up, "And do you think this act compromised the lining, or it was already compromised?" *Id.* M.R. responded to that question, "I cannot answer that." *Id.* A grand juror then asked, "So you say that repairs would still be necessary before the defendant interacted with the pool. Correct?" *Id.* M.R. responded, "Correct." *Id.* And finally, a grand juror asked M.R., "[D]o you have an estimate of . .

. what that additional time or cost may be monetarily?” *Id.* at 29. M.R. responded, “No. It’s very dependent on the contractor . . . .” *Id.*

The government cannot cure the deficiencies in a witness’s grand jury testimony by presenting the witness again to give testimony that contradicts sworn testimony from just moments earlier. And the government’s comment to the grand jury—that the witness’s follow-up answer “kind of nailed down that specific question”—was wholly inappropriate. In effect, it instructed the grand jury that the question had been fully and completely answered and foreclosed further questions on that important issue. After M.R.’s newly elicited testimony, the only appropriate follow up from government counsel would have been to inquire without commentary whether there were any further questions from the grand jury.

Far from reflecting proper use of the grand jury in this matter, the new version of M.R.’s transcript underscores the need for the relief requested in Mr. Hearn’s Motion.

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For the reasons set forth above and in his Motion for Disclosure of Grand Jury Minutes and Legal Instructions, Mr. Hearn respectfully requests that the Court order the government to disclose the complete grand jury minutes in this matter and the legal instructions given to the grand jury on the elements of D.C. Code § 22-303, or, alternatively, conduct an in camera review of the requested materials.

Respectfully submitted,

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