

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division – Felony Branch

UNITED STATES	:	Case No. 2026 CF2 010237
	:	
v.	:	Judge Todd E. Edelman
	:	
DAVID C. HEARN	:	

ORDER

Dismissals of criminal cases occur practically every day in Superior Court. In some cases, the government moves to dismiss due to difficulties in locating witnesses, reevaluation of the strength of the case, issues with the physical evidence, the inability to timely secure an indictment or provide discovery, or a myriad of other reasons. In others, the prosecutors announce that they cannot move forward on the day of trial – most often because an essential witness has not appeared in court – and the judge dismisses the case for want of prosecution. In virtually all these cases, the court enters the dismissal without prejudice, permitting the government to revive the prosecution at a later date should, for example, it locate additional evidence or resolve witness availability problems. Such dismissals recognize the inherent role of the prosecutorial authority in deciding which cases to pursue and afford greater weight to the public interest in allowing the government to investigate and pursue criminal cases than to the interest of criminal defendants in having absolute certainty as to whether a prosecution may resume.

This case, however, presents a markedly different scenario. In July 2026, the United States secured an indictment against Defendant David C. Hearn for felony destruction of property based upon allegations that he had damaged the lining of the Lincoln Memorial Reflecting Pool. Within a month, the government recognized that its

prosecution lacked merit. It reached this conclusion not because it had misidentified Mr. Hearn as the perpetrator of the alleged act, but because *no crime had occurred*: the observed damage to the Reflecting Pool was due to a contractor's "rushed and botched" installation of the lining while conducting renovations, and Mr. Hearn's actions had no effect on the value of the Pool. The prosecutors immediately moved to dismiss the Indictment and the above-captioned case, and the undersigned quickly granted that request, leaving for another day whether to enter that dismissal with or without prejudice.

The government urges the Court to treat this case no differently than any other and therefore to dismiss the matter without prejudice, i.e., in a manner that would hypothetically allow it to re-charge Mr. Hearn with this offense at some point in the indefinite future, restricted only by the six-year statute of limitations. But a dismissal without prejudice would not account for the exceptional circumstances presented by this case. While the government wishes to hold open the possibility of the development of evidence that would support a future prosecution, its own representations make plain that such a possibility is theoretical at best, and more likely, is simply fanciful. At the same time, the President of the United States has criticized the decision of the Office of the United States Attorney to drop the case in the most vituperative terms; demanded that the government reinstitute the prosecution, in part because of Mr. Hearn's political activity and the identity of one of his attorneys; and publicly entertained the possibility of firing the United States Attorney as a result of the dismissal. While all defendants deal with some degree of uncertainty regarding the odds of re-prosecution after a case has been dismissed, Mr. Hearn faces the unique possibility that the government will revive this

case – one that it has already announced to be meritless – based on political pressure brought by the President of the United States upon his subordinate officers.

The Court respects the authority of the Office of the United States Attorney to decide which cases to prosecute and which to dismiss. However, in the exceptional circumstances posed by this case, the government has no right to retain the ability to compound the errors it has already made, or even to threaten to do so, at Mr. Hearn’s expense. For the reasons detailed *infra*, this case must be dismissed with prejudice, and the government must thus be barred from reinstituting this charge against Mr. Hearn.

I. BACKGROUND AND PROCEDURAL HISTORY

On June 19, 2026, United States Park Police (USPP) officers arrested Mr. Hearn at the Lincoln Memorial Reflecting Pool. Government’s Motion to Dismiss the Indictment at 2-3 (July 31, 2026) [hereinafter Gov’t. Mot.]. According to the USPP arrest report and other information alleged by the government, Mr. Hearn approached the Reflecting Pool as National Park Service (NPS) employees were cleaning it and took a video or photograph of it. *Id.* at 3. One of the NPS employees has claimed that Mr. Hearn then knelt down, placed both of his hands into the Reflecting Pool, and “started to ‘violently’ rip and tug at a large portion of the blue pool coating.” *Id.* Mr. Hearn allegedly continued to pull at the lining until National Guard soldiers arrived. *Id.* From the outset, Mr. Hearn has insisted that he only touched a portion of the liner that had already peeled from the bottom of the Reflecting Pool and that he did not tear or remove any part of the lining. *See, e.g.,* Defendant’s Motion for Return of Property Pursuant to

D.C. Superior Court Rule 41(g) and Motion to Compel at 3 (July 10, 2026) [hereinafter Mot. for Return of Property].

After USPP officers arrested Mr. Hearn and processed him at the Hains Point station, he was released with a citation to appear in Superior Court on July 9, 2026. *Id.* at 2. Before Mr. Hearn’s court date, the government secured a grand jury indictment charging him with one felony count of Destruction of Property in violation of D.C. Code § 22-303. The Indictment – returned on July 2, 2026, less than two weeks after Mr. Hearn’s arrest – alleges that Mr. Hearn “maliciously did injure, break and destroy certain property, that is, lining material of the Lincoln Memorial Reflecting Pool, property of the United States government, causing damage in the amount of \$1000 or more.” Mr. Hearn appeared in Superior Court on July 9, 2026 for his arraignment.

A mere three weeks later, on July 31, 2026, the government sought to abandon this prosecution, filing its aforementioned Motion to Dismiss the Indictment. In short, the government elected to dismiss the case not because it had developed doubts as to whether Mr. Hearn had reached into the Reflecting Pool and pulled at the lining, but because it had learned that his conduct had not damaged the Pool so as to diminish its economic value, as required for the offense of malicious destruction of property. Motion Hearing Tr. at 4:18–6:23 (Sept. 4, 2026) [hereinafter 9/4/26 Tr.]. *See also* Criminal Jury Instructions for the District of Columbia No. 5.400 (2026) (defining malicious destruction of property to necessarily entail some economic loss or loss in value). As detailed in fuller detail *infra*, the government reportedly had received information from the United States Department of the Interior (DOI) and NPS after the return of the Indictment that “strongly suggest[ed] that a rushed and botched installation [of the lining]

by [Atlantic Industrial Coatings], the primary contractor, led to the damage to the lining of the Reflecting Pool,” Gov’t. Mot. at 18, and that caused the government to concede that “it is difficult to attribute the widespread damage to the Reflecting Pool to vandalism, let alone to establish that fact beyond a reasonable doubt,” *id.* at 19. Indeed, the government acknowledged that had it received this information earlier, it would not have even sought a grand jury indictment against Mr. Hearn. *Id.* at 18. The Government’s Motion accordingly asked that the Court dismiss the Indictment against Mr. Hearn, but to do so without prejudice. *Id.* at 19.

Within a day of the filing of the Government’s Motion, President Donald J. Trump began issuing a barrage of statements harshly criticizing the decision of the Office of the United States Attorney to dismiss the case, declaring Mr. Hearn’s guilt, and lambasting Mr. Hearn and one of his attorneys. While the Court has set aside descriptions of the President’s non-public statements and thought processes that appear in various news articles cited by the defense, the President made a series of public statements regarding this case and the Government’s Motion:

- On August 1, 2026 – the morning after the government filed its Motion to Dismiss the Indictment – President Trump made a post on the social media platform Truth Social that stated, “I disagree 100% with Jeanine Pirro, the U.S. Attorney for the District of Columbia, on the Reflecting Pool. I don’t know what she was thinking?” The President further opined that “it was a pure case of VANDALISM . . . There may have been some contractor difficulty, but the major damage was caused by VANDALS!”¹

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

- On August 3, 2026, at a ceremony marking the signing of an Executive Order, President Trump responded to a reporter’s question about the case by again stating, “Jeanine Pirro made a mistake. It was vandalism.”² He added: “The judge was extremely unfriendly to [United States Attorney] Jeanine [Pirro]. And frankly, I think she 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.”³ And I guess she choked. I don’t know what the hell happened⁴ . . . I was disappointed with Jeanine Pirro, really disappointed with Jeanine Pirro. She folded like an umbrella. And people get away with things, and it’s a disgrace.”⁵ As to what had occurred at the Reflecting Pool, the President declared “there was vandalism”⁶ . . . they put their hands and they pulled it.”⁷

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 The undersigned is unclear as to what the President was referring to in these remarks. As of the date of those comments, the undersigned had presided over one brief hearing in this case, a July 20, 2026 Status Hearing at which the Court set a trial date and several other deadlines. The undersigned made one substantive ruling at the hearing, denying the Defendant’s July 16, 2026 Motion to Dismiss the Indictment for Failure to Preserve Material Exculpatory Evidence while cautioning the government regarding potential issues that could arise if the alleged crime scene was altered before the government allowed defense counsel to have access to it (a step that government counsel assured the Court they had already taken). United States Attorney Pirro did not attend the hearing and was not referenced by any party or the Court.

⁴ President Trump Signs an Executive Order, *supra* note 2, at 48:13.

⁵ *Id.* at 53:05.

⁶ *Id.* at 45:30.

⁷ *Id.* at 46:06.

- On August 4, 2026, President Trump told reporters that he had not made a determination as to whether to remove United States Attorney Pirro from her position as a result of her decision to dismiss the case.⁸
- On August 6, 2026, the President again commented on the United States Attorney's decision to dismiss the case, calling it "a terrible decision" and questioning "why she did such a stupid thing." He added that, despite her conclusion that "there was no vandalism" of the Reflecting Pool, there had actually been "tremendous vandalism."⁹
- On August 7, 2026, President Trump returned to Truth Social to claim that reporting had uncovered "pure VANDALISM at The Reflecting Pool." He went on to urge Ms. Pirro to reinstate the case, particularly in light of the purported political affiliations of Mr. Hearn and his use of Norm Eisen as one of his attorneys, writing: "U.S. Attorney Jeanine Pirro should re-visit her hastily made decision, especially since it turned out that the 'gentleman' involved is a big player in ActBlue, a disgraceful fundraising SCAM, and is represented by a TRUMP DERANGED SLEAZEBAG, Political Hack Lawyer, Norm Eisen, and CREW, a group that uses 'charity' for political purposes which is, to the best of my knowledge, ILLEGAL! I have been beating Eisen, a complete LUNATIC, in Court for

⁸ C-SPAN, *Trump on Jeanine Pirro's future: "I haven't made a determination"*, at 0:28 (YouTube, Aug. 5, 2026), <https://www.youtube.com/watch?v=VFhHooFuZQo>.

⁹ See Maya Yang, *Trump again rebukes Jeanine Pirro over reflecting pool 'vandalism' case*, GUARDIAN (Aug. 6, 2026), <https://www.theguardian.com/us-news/2026/aug/06/trump-jeanine-pirro-reflecting-pool-vandalism>.

10 years, or more. He just keeps coming, but I always WIN!”¹⁰

- On August 16, 2026, President Trump again referenced the government’s dismissal of the case in a Truth Social post, declaring, “Anybody who thinks the Reflecting Pool wasn’t vandalized should go back to Law School!”¹¹

For his part, Mr. Hearn responded to the Government’s Motion on August 4, 2026 by not opposing the request for dismissal, but moving that any dismissal be entered with prejudice. Defendant’s Response to Government’s Motion to Dismiss the Indictment at 1-2 (August 4, 2026) [hereinafter Def. Response]. The Court subsequently issued an Order on August 6, 2026 granting the parties’ joint request to dismiss the case, but deferring ruling on the nature of the dismissal pending further briefing and a hearing. Mr. Hearn filed a Supplement to his original Response on August 13, 2026. The government filed its Reply to Defendant’s Response on August 18, 2026, to which Mr. Hearn filed a Surreply on August 25, 2026. The Court presided over oral arguments on the remaining issue at a hearing conducted on September 4, 2026, and thereafter took the matter under advisement.

¹⁰ Donald J. Trump (@realDonaldTrump), Truth Social (Aug. 7, 2026) <https://truthsocial.com/@realDonaldTrump/posts/117056188782446044>.

¹¹ Donald J. Trump (@realDonaldTrump), Truth Social (Aug. 16, 2026) <https://truthsocial.com/@realDonaldTrump/posts/117108132750817532>. Mr. Hearn submitted a screenshot of this post as an attachment to his Motion to Admit Photograph, which his counsel provided to the undersigned in hard copy form at the September 4, 2026 hearing and eventually filed on the docket on September 28, 2026.

II. ANALYSIS

District of Columbia Superior Court Rule of Criminal Procedure 48(a)(2) provides, in relevant part, that “[t]he government may, with leave of court, dismiss an indictment. Such a dismissal is without prejudice unless otherwise stated.” Super. Ct. Crim. R. 48 (a)(2). Because Rule 48(a) is “analogous” to Federal Rule of Criminal Procedure 48, our Court of Appeals has found federal case law interpreting that rule to be instructive. *Ferrell v. United States*, 990 A.2d 1015, 1018–19 (D.C. 2010).

By its explicit language, Rule 48(a)(2) vests a trial judge with some discretion to deny a prosecutor’s request to dismiss a case. The Rule provides little direction as to when a court should do so: as the Supreme Court has observed, while “[t]he words ‘leave of court’ . . . obviously vest some discretion in the court, the circumstances in which that discretion may properly be exercised have not been delineated by this Court.” *Rinaldi v. United States*, 434 U.S. 22, 29 n.15 (1977). Thus, despite the “leave of court” requirement, courts virtually always defer to the prosecutor’s decision to drop a criminal case. *See, e.g., United States v. Giannattasio*, 979 F.2d 98, 100 (7th Cir. 1992) (“A judge in our system does not have the authority to tell prosecutors which crimes to prosecute or when to prosecute them.”); *Newman v. United States*, 382 F.2d 479, 480 (D.C. Cir. 1967) (“Courts have regularly refused to interfere with these voluntary dismissals of prosecution.”). Indeed, when deciding whether to allow the government to abandon a prosecution, “a court’s inquiry is narrow.” *United States v. Adams*, 777 F. Supp. 3d 185, 207 (S.D.N.Y. 2025).

Courts have, however, also read the language of Rule 48(a)(2) to have “the effect of granting authority to the court in exceptional cases to reject a dismissal without

prejudice – which would allow re-prosecution – if this would result in harassment of the defendant or would otherwise be contrary to the manifest public interest. The Court would then instead order a dismissal with prejudice.” *United States v. Poindexter*, 719 F. Supp. 6, 10 (D.D.C. 1989). Because “[t]he determination of whether a dismissal should be with or without prejudice does not entail the kind of incursion on the executive branch that an order to pursue an unwanted prosecution would,” decisions regarding the ultimate nature of a dismissal have been deemed “well within the judicial wheelhouse as a matter of judicial competence.” *Adams*, 777 F. Supp. 3d at 215. Accordingly, “[n]otwithstanding the significant limitations on a court’s authority to deny a Rule 48(a) motion to dismiss altogether, a court retains discretion to determine whether a dismissal should be with or without prejudice.” *Id.* at 214.

As emphasized in the introduction to this Order, there exists a “strong presumption” in favor of permitting the government to dismiss an indictment without prejudice. *See, e.g., United States v. Borges*, 153 F. Supp. 3d 216, 219 (D.D.C. 2015); *United States v. Florian*, 765 F. Supp. 2d 32, 34–35 (D.D.C. 2001); *Poindexter*, 719 F. Supp. at 13. In determining whether to dismiss a case with or without prejudice, a trial judge must evaluate “the purpose sought to be achieved by the government and its effect on the accused.” *Poindexter*, 719 F. Supp. at 10. *See also United States v. Thompson*, 2026 U.S. Dist. LEXIS 183927, at *34 (D.D.C. 2026); *Borges*, 153 F. Supp. 3d at 219. Many precedents have focused this inquiry on the government’s purpose or interest in seeking a dismissal; the presence or absence of bad faith on the part of the government; and the objective impact of a dismissal without prejudice on the defendant. *Adams*, 777 F. Supp. 3d at 214–15; *United States v. Madzarac*, 678 F. Supp. 3d 42, 48 (D.D.C. 2023).

While many courts analyze the prosecutor’s good or bad faith as part of the determination of whether a case should be dismissed with or without prejudice, most – including federal courts in the District of Columbia – do not require a judge to make a finding of bad faith in order to dismiss a case with prejudice. *See, e.g., Thompson*, 2026 U.S. Dist. LEXIS 183927, at *49 n. 4 (“The D.C. Circuit, however, has not followed this bad-faith approach”); *Adams*, 777 F. Supp. 3d at 215 (“[W]hile bad faith is a relevant consideration, most courts do not require a finding of bad faith to grant dismissal with prejudice”); *Madzarac*, 678 F. Supp. 3d at 50 (dismissing with prejudice “[e]ven though there is no suggestion of anything but good faith on the part of the government and its attorneys”); *Borges*, 153 F. Supp. 3d at 221 (dismissing with prejudice while noting “that neither this Court, nor the defendants, question the Government’s good faith in its attempts to secure a dismissal without prejudice”); *Poindexter*, 719 F. Supp. at 11 (dismissing with prejudice despite finding that “the subjective good faith of [the prosecutor] . . . is not at issue.”). *But see United States v. B.G.G.*, 53 F.4th 1353, 1356 (11th Cir. 2022) (noting need for a finding of prosecutorial bad faith to overcome presumption that case should be dismissed without prejudice); *United States v. Goodson*, 204 F.3d 508, 512 (4th Cir. 2000) (“[T]he court must grant the government’s Rule 48(a) motion unless the court concludes that to grant it would be clearly contrary to manifest public interest, determined by whether the prosecutor’s motion to dismiss was made in bad faith.”). Indeed, while the government defended its own good faith in bringing and subsequently dismissing the Indictment, it acknowledged at the September 4, 2026 hearing that this factor “is not dispositive one way or the other.” 9/4/26 Tr. at 40:12-13.

- A. *Given its representations about the evidence, the government has only the most marginal interest in maintaining the possibility of a future prosecution of Mr. Hearn*

In weighing the government's interest in obtaining a dismissal without prejudice that would allow it to reinstate charges against Mr. Hearn in the future, the Court must first assess "the purpose sought to be achieved by the government" should the Court grant such a request. *Poindexter*, 719 F. Supp. at 10. The government urges the Court to confine its analysis of this factor to whether it has presented an adequate, good faith reason for the dismissal, and contends that because it dismissed the case for such a reason — i.e., its realization that it lacked sufficient evidence to support the Indictment, much less a conviction — this factor should weigh in favor of dismissal without prejudice. *See, e.g.*, Government's Reply to Defendant's Response to Government's Motion to Dismiss the Indictment Without Prejudice at 2-3 (August 18, 2026) [hereinafter Gov't. Reply]. The case law does not, however, conflate the question of the government's *good faith* and the government's *purpose* in seeking a dismissal without prejudice in such a fashion. Rather, the court must separately evaluate the government's purpose, i.e., "[t]he government's reasons for keeping open the possibility of a further prosecution of this defendant at some later time." *Poindexter*, 719 F. Supp. at 11. *See also United States v. Cabral-Gonzalez*, 2025 U.S. Dist. LEXIS 223697, at *4 (D. Co. 2025) (finding the government has "nothing to gain from preserving [the] possibility" of subjecting a defendant to a future prosecution); *Borges*, 153 F. Supp. 3d at 221 (evaluating whether dismissal without prejudice would actually allow the government to secure the necessary witness testimony). "[W]hat matters is not just *what* the government seeks – dismissal without prejudice – but *why*." *Thompson*, 2026 U.S. Dist. LEXIS 183927 at *49

(emphasis in original).

In the run-of-the-mine case, the government's reasons for seeking a dismissal without prejudice are rarely controversial. In most situations, dismissal without prejudice allows the government to further investigate the case, find a witness, or cure another problem that precludes successful prosecution at present but might be overcome in the foreseeable future. Indeed, most of the precedents in this area (including those cited by the government) involve government requests for dismissals under such circumstances. *See, e.g., United States v. Jones*, 664 F.3d 966, 973 (5th Cir. 2011) (government permitted to dismiss case without prejudice in order to add defendants and charges and to move prosecution to a trial court division nearer to the location of the charged offenses); *United States v. Hayden*, 860 F.2d 1483, 1488 (9th Cir. 1988) (government permitted to dismiss without prejudice in order to investigate additional information and potentially bring additional charges); *Madzarac*, 678 F. Supp. 3d at 45-46 (government moved to dismiss without prejudice to bring case in district with proper venue); *Florian*, 765 F. Supp. 2d at 35 (government permitted to dismiss without prejudice in order to bring charges in Virginia covering the same conduct).

Unlike in any case that the undersigned can recall, here the government's purpose in seeking a dismissal without prejudice appears to be based on an entirely theoretical possibility that evidence may somehow appear that undermines its current well-founded conclusion that no crime was committed. Again, the government has not lost faith in its belief as to what Mr. Hearn did on June 19, 2026: it continues to trust the accounts of the NPS witnesses, *see* 9/4/26 Tr. at 5:4-8, and no further investigation into Mr. Hearn's conduct or motives would be necessary to revive this prosecution. Rather, based on what

appears to be the entire universe of evidence likely to ever elucidate the cause of the damage to the Reflecting Pool, the government has concluded that whatever Mr. Hearn did had no impact on the Pool's economic value, and that he thus did not commit the crime of malicious destruction of property. 9/4/26 Tr. 5:9-17.

The nature and strength of the evidence supporting the conclusion that contractor error, and not anything that Mr. Hearn did, caused the damage to the Reflecting Pool strikes the undersigned as fairly overwhelming. The government based this finding both on the contemporaneous observations and communications of DOI and NPS personnel as the contractor was installing the new liner in the Reflecting Pool, Gov't. Mot. at 7-15, as well as on engineering analyses completed after the installation, *id.* at 15-17. *See also* 9/4/26 Tr. 5:19-6:3. To begin with, assessments of the installation made during the construction showed that Mr. Hearn had pulled on a portion of the lining called the "overspray" that was already peeling and thus "of little or no value." 9/4/26 Tr. 6:10-16. Specifically, as explained by an NPS engineer in an email written to other NPS and DOI personnel on June 11, 2026 – over a week before Mr. Hearn's arrest – the "overspray" was caused from spraying the expansion joints around the Reflecting Pool's perimeter with polyurea. Gov't. Mot. at 9-10. The portion of the Pool's liner that Mr. Hearn allegedly touched was the precise area identified by the NPS engineer as "vulnerable to peeling" due to overspray. *Id.* at 10. Standing alone, these contemporaneous observations by the NPS "cast significant doubt that the defendant caused damage to the lining." Gov't. Reply at 6. In addition, an engineering study performed immediately after the Pool had been drained confirmed this conclusion. The analysis completed by B.C.S. Construction Engineering attributed the damage to "overspraying and a failure of the

coatings to bond,” Gov’t. Mot. at 15, and further “suggest[ed] that removing the liner at the perimeter would have had no negative impact on the economic value of the liner,” *id.* at 19. The U.S. Attorney Office’s comprehensive review of all these materials – reportedly some 695 megabytes of documents, *id.* at 6 – demonstrated “that damage to the Lincoln Memorial Reflecting Pool in June 2026 was the result of flawed installation by the contractor, Atlantic Industrial Coatings (‘AIC’), and the rush to complete the project prior to events associated with the America 250 celebration in the weeks surrounding Independence Day 2026,” *id.* at 1.

The government’s assertion that flawed and hasty renovation work by a contractor, and not the conduct of Mr. Hearn, caused the damage to the Reflecting Pool was based on what appears to be the best possible evidence that could ever be produced as to that question: the contemporaneous and documented observations of NPS and DOI personnel during the renovation project, as well as an expert engineering analysis performed immediately after the renovation was concluded. What possible evidence could ever develop that could challenge this conclusion such that the government could prosecute Mr. Hearn? From what source could such evidence emerge? When asked these questions in open court, the Assistant United States Attorney waxed philosophical, musing, “I don’t know what the future may bring. None of us do.” 9/4/26 Tr. at 7:19-20. He suggested that additional evidence may “come forth,” *id.* at 7:21, just as the government had earlier written that such evidence may “materialize,” Gov’t. Reply at 6. But the prosecutor could not describe even the potential nature of any probative evidence that may suddenly “materialize” or the source from which it could “come forth.” Instead, he candidly admitted that the notion that additional evidence could support a future

prosecution “necessarily involves speculation,” 9/4/26 Tr. at 7: 19, or even “pure speculation,” *id.* at 18:3; he could not provide a single concrete example of a type of evidence that could ever make this prosecution viable, *id.* at 9:7-15, and stated that the government was no longer even investigating the case, *id.* at 10:25-11:11.¹²

In the end, the government’s acknowledgement of its interest in maintaining the possibility of a future prosecution as “purely theoretical,” *id.* at 11:15-19, seems particularly meaningful. In *Poindexter*, a United States District Judge described the prosecution’s reasons for keeping open such a possibility as “somewhat murky.” *Poindexter*, 719 F. Supp. at 11. In this matter, the government’s reasons for seeking a dismissal without prejudice are even less concrete. Given its own description of the existing evidence and the circumstances of this case, the development of contrary evidence seems practically inconceivable, and the possibility of a future meritorious prosecution strikes the Court as fanciful. The government has not demonstrated anything close to a legitimate, much less compelling, purpose for dismissing this matter without prejudice.

¹² At the hearing, the prosecutor eventually noted that the Reflecting Pool was being repaired and suggested that the repair process might lead to the discovery of evidence that could support a future prosecution of Mr. Hearn. 9/4/26 Tr. at 9:25-10:4. He conceded that the discovery of new inculpatory evidence in this fashion is, again, entirely speculative, 9/4/26 Tr. at 10:1-4 (“It is possible . . . I don’t know”), and could not state whether any analysis as to the cause of the damage was being done as part of the repair process, *id.* at 10:5-8. In any event, according to public reporting, Atlantic Industrial Coatings has attributed the damage it is now endeavoring to repair to its own errors during the original installation process. David Fahrenthold & Maxine Joselow, *Contractor Blames Its Own Repairs, Not Vandals, for Reflecting Pool Failure*, N.Y. TIMES (Sep. 11, 2026), <https://www.nytimes.com/2026/09/11/climate/reflecting-pool-contractor-trump.html>.

B. Dismissal without prejudice would subject Mr. Hearn to a unique risk of a meritless, politically driven prosecution in the future

In evaluating whether to grant the government's request for a without-prejudice dismissal, the Court must also consider the effect of such a dismissal on Mr. Hearn. *See, e.g., Poindexter*, 719 F. Supp. at 10. The government contends that in the context of Rule 48 dismissals, the only type of prejudice to a defendant recognized by the case law stems from "the rebringing of charges and then the serial dismissing of those charges," 9/4/26 Tr. at 15:19-21, and that a defendant's objections to prosecutorial harassment must be brought only upon the filing of a successive case, *id.* at 17:6-12. Because the government has not yet recharged Mr. Hearn or engaged in any type of serial dismissal strategy, it argues that Mr. Hearn's interests have not been impacted such that the Court can consider dismissal with prejudice.

As with its arguments pertaining to the Court's assessment of the reasons for the dismissal, the government has advanced a parochial interpretation of the role of the defendant's interests in determining whether a dismissal should be entered with or without prejudice that lacks support in the governing law. The case law interpreting Rule 48 seeks to guard against the government's charging, dismissing, and subsequent refiling of a case against a defendant, but focuses on the need to protect a defendant against such a practice in describing when a judge should consider denying a government motion to dismiss altogether. *See, e.g., Rinaldi*, 434 U.S. at 29 n.15 (Rule 48 requires leave of court "to 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."); *United States v. Ammidown*, 497 F.2d 615, 620 (D.C. Cir. 1973). As

delineated *supra*, Rule 48 also permits a court to grant a prosecution’s motion to dismiss, but to consider whether to grant the dismissal with prejudice. Depending on the circumstances of a case, a trial judge can enter such a dismissal before the government has instituted a new prosecution. “Numerous district courts have dismissed prosecutions with prejudice, even when the government seeks dismissal without it, to protect defendants from *the unwarranted or inappropriate threat of re-indictment.*” *Adams*, 777 F. Supp. 3d at 214 (emphasis added). *See also Cabral-Gonzalez*, 2025 U.S. Dist. LEXIS 223697, at *2; *Madzarac*, 678 F. Supp. 3d at 50; *Borges*, 153 F. Supp. 3d at 221; *Poindexter*, 719 F. Supp at 11.

Whenever a court dismisses a case without prejudice, the defendant faces a cognizable harm: the stress and uncertainty of not knowing whether the government will prosecute them at some point in the future. In rare instances – particularly where the government’s ability to recharge the case seems unrealistic – this species of harm alone can justify a dismissal with prejudice. *See, e.g., Borges*, 153 F. Supp. 3d at 221 (“[T]he ongoing threat that the Government *may* change course at a later date is itself the very type of harassment that warrants a with prejudice dismissal.”); *Poindexter*, 719 F. Supp. at 12 (after a without-prejudice dismissal, defendant “would have to wait in a state of uncertainty and under public obloquy for an indefinite period of time . . .”).

But in this case, Mr. Hearn faces an additional—and practically unprecedented—type and degree of risk should the Court dismiss this case without prejudice. As elucidated *supra*, the government has conceded that its prosecution of Mr. Hearn was meritless and cannot identify any potential evidence or avenue of investigation that would allow it to reinstitute the case in good faith. Despite the existence of substantial evidence

that Mr. Hearn committed no crime, the President of the United States himself has repeatedly and publicly criticized the government’s decision to dismiss the case and pushed it to recharge Mr. Hearn.¹³ Notwithstanding the compelling evidence cited by the Office of the United States Attorney attributing the damage to the Reflecting Pool to the misfeasance of the contractor, President Trump has repeatedly declared that vandals (including Mr. Hearn) were responsible.¹⁴ He has made his opinion that the government should not have moved to dismiss this case abundantly clear, calling that decision “terrible” and “stupid,”¹⁵ ridiculing United States Attorney Pirro for having “choked”¹⁶ and “folded like an umbrella,”¹⁷ and adding that those who disagree with his assessment need to “go back to Law School.”¹⁸ The President has stated that United States Attorney Pirro – his appointee – should reconsider her “hastily made decision” to drop the prosecution.¹⁹ Most concerning, he has suggested a political basis for his requests, maintaining that the government should reinstitute this criminal prosecution “especially since” Mr. Hearn has donated to ActBlue, a Democratic Party-affiliated

¹³ See *supra* note 10 (“U.S. Attorney Jeanine Pirro should re-visit her hastily made decision [to dismiss the case].”).

¹⁴ See *id* (characterizing the alleged damage to the Reflecting Pool as an act of “VANDALISM”).

¹⁵ *Supra* note 9.

¹⁶ *Supra* note 4.

¹⁷ *Supra* note 5.

¹⁸ *Supra* note 11.

¹⁹ *Supra* note 13.

fundraising platform,²⁰ and is represented by Mr. Eisen.²¹ And the President has indicated that he has not decided whether to fire the United States Attorney regarding her decision not to pursue this case.²² The government acknowledges, of course, that it could change its mind regarding its decision to prosecute Mr. Hearn – that it could even do so “[t]en minutes from now,” 9/4/26 Tr. at 11:13 – and that President Trump can fire and replace the United States Attorney and any of her assistants at any time, *id.* at 14:20-24.

The President’s public posts and comments illuminate the extraordinary nature of the risk to Mr. Hearn should the Court dismiss this case without prejudice. Although the prosecutors assigned to this case have deemed it meritless, the President of the United States has repeatedly disparaged them and pressured them to change course. Mr. Hearn thus finds himself differently situated than any of the other defendants who have had their cases dismissed in Superior Court: while the prosecutors admit that the evidence indicates that he committed no crime, the President’s statements create a risk that Mr. Hearn will be prosecuted nonetheless, either because the current United States Attorney and her assistants will eventually yield to his public pressure campaign or because the President will replace them with prosecutors more likely to carry out his wishes. Additionally, Mr. Hearn would have to await the decision as to whether the government revives a criminal case against him knowing that should he engage in political activity, his conduct could be viewed by the President as a reason to reinstate the prosecution.

²⁰ ActBlue is a digital fundraising platform for Democratic candidates which helps raise money for Democrats running for office at all levels. *ActBlue: About Us*, ACTBLUE (2026), <https://www.actblue.com/about/>.

²¹ *Supra* note 10.

²² *Supra* note 8.

The Court strongly disagrees with the government’s contention that should it reinstate the prosecution, the grand jury process would afford “extensive protection to the defendant.” Gov’t. Reply at 8. *See also* 9/4/26 Tr. at 18:6-8 (characterizing the grand jury process as a “very significant protection of a defendant’s liberty interests”). Grand jury testimony occurs outside of the presence of a judge, and the defendant has no right to cross-examine witnesses or otherwise challenge the evidence brought forth by the prosecutor. As the government pointed out in another context, a future prosecutor would not need to detail all of the evidence regarding the cause of the damage to the Reflecting Pool to a future grand jury, as “the government is not required to present an exhaustive account of the alleged crime, let alone to detail exculpatory evidence, in the grand jury.” Gov’t. Reply at 3 n.1 (citing *United States v. Williams*, 504 U.S. 36, 53-54 (1992)).

Given the process that led to the Indictment in this case, Mr. Hearn and the public cannot view the promise that a future grand jury would protect him against a meritless, politically driven prosecution at some point in the future as anything short of facetious. The government indicted Mr. Hearn at a near-record pace, with the grand jury voting on the charge less than two weeks after his arrest. At the time the Indictment was returned, some of the government’s own initial conclusions as to the origins of the damage to the Reflecting Pool’s liner were equivocal at best, *see* Defense Response Ex. A at 67, 68, 71-73, 76, & 78 (August 4, 2026),²³ and public reporting before and shortly after the return

²³ A United States Attorney’s Office document titled “Lincoln Memorial Reflecting Pool Damage Assessment” and dated June 30, 2026 (i.e., two days before the government sought and obtained the Indictment) noted liner peeling and other issues at various locations throughout the Reflecting Pool, some of which were already determined to be unrelated to vandalism. *See* Defense Response Ex. A at 67, 71-73, 76, & 78. With regard to the area of the Pool that the government charged Mr. Hearn with damaging, this same assessment only described the damage as a “[m]ajor failure point, *possible result of vandalism* after initial peeling.” *Id.* at 68 (emphasis added).

of the Indictment pointed to factors other than vandalism as the cause of the alleged damage, *see, e.g.*, Def. Response at 6 n.6. The government was, in fact, still conducting what most would consider preliminary investigation into these basic issues at this juncture; it had received only “barebones police reports” from the USPP, Gov’t. Mot. at 2, and its requests for information, documents, and other materials (the same materials that later led it to dismiss the case) were still outstanding with the DOI. 9/4/26 Tr. at 22:10-13.²⁴ Rather than fully investigating the matter or even waiting until the requested documents had arrived from another federal agency, the government charged ahead with a lightning-fast indictment process. While the government asserts that it wanted to obtain a quick indictment for deterrence purposes, *see* 9/4/26 Tr. at 24:3-5; Gov’t. Reply at 3 n.1, this rationale makes little sense in light of the frequent practice of the Office of the United States Attorney to use much, if not all, of the statutory nine-month pre-indictment period to complete its investigation and the grand jury process, *see* D.C. Code § 23-102; it seems incongruous to assert that a quick indictment serves to deter destruction of property offenses but does not justify a faster process in order to deter homicides and other violent crimes. The Court agrees with the defense that in securing the Indictment against Mr. Hearn, the government shot first and asked questions later. Nothing about the

²⁴ In addition, United States Attorney Pirro and senior United States Attorney’s Office supervisors took the time to visually inspect the Reflecting Pool, but did so on July 1, 2026, while it “remained filled with water, making it difficult to observe the condition of the floor of the entire pool, which was mostly obscured as it [was] covered with water.” Gov’t. Mot. at 5. Had they waited a brief period of time prior to indicting Mr. Hearn, they would have been able to observe that the Pool had been extensively damaged during the installation process: when Pirro and the USAO supervisors came back to the scene of the alleged crime just over two weeks after the Indictment had been returned, they “immediately noted extensive damage throughout the now-drained pool.” *Id.* at 6.

grand jury process would prevent it from giving in to the President's pressure and doing so again.²⁵

Dismissal without prejudice thus would endanger Mr. Hearn in a manner that few, if any, Superior Court defendants have faced. Should the Court dismiss this case in a fashion that allows the government to reinitiate prosecution in the future, the Court would be exposing him to the risk that, due to pressure from the President of the United States apparently motivated at least in part by Mr. Hearn's political views, he would again be charged with a crime that prosecutors have determined he did not commit. These risks must weigh heavily in the assessment of whether to dismiss this case without prejudice.

C. Balancing the competing interests demands dismissal with prejudice

In *Poindexter*, one of the few cases analogous to this matter, the United States District Court for the District of Columbia framed the question presently facing the Court as whether “it objectively amount[s] to harassment, [or] is...contrary to the public interest, to allow the prosecutor to dismiss charges but nevertheless keep them in abeyance for an indefinite period of time in the hope or expectation that something will turn up.” *Poindexter*, 719 F. Supp. at 11. Where, as is the case here, the government offers little reason to believe that future developments will enable a viable prosecution, this calculus often favors dismissal with prejudice. Indeed, in *Poindexter* itself, the judge determined that given the unlikelihood that the issues regarding the security classification

²⁵ The government also argues that the statute of limitations further protects Mr. Hearn, as it “provides a finite limit to a defendant’s potential exposure to criminal charges.” Gov’t. Reply at 8. However, given the President’s impassioned statements, the statute of limitations offers Mr. Hearn no protection from the risk of meritless prosecution he faces.

of certain materials would resolve in a manner that would allow a prosecution on certain counts to proceed, the burden on the defendant of having “to wait in a state of uncertainty and under public obloquy for an indefinite period of time” required dismissal with prejudice. *Id.* at 12. Similarly, in *Borges*, the trial judge found little reason to believe that the credibility issues surrounding an FBI Special Agent that motivated the government’s motion to dismiss would likely ameliorate and thus concluded that “the ongoing threat that the Government *may* change course at a later date is itself the very type of harassment that warrants a with prejudice dismissal.” 153 F. Supp. 3d at 221 (emphasis in original). And in *Cabral-Gonzalez*, a case from the United States District Court for the District of Colorado, the District Judge found that where the government had conceded the complete absence of evidence as to an essential element of the charged offense, the effect of a dismissal without prejudice “would be to subject the defendant to future potential arrest and prosecution for a case that the government cannot — and apparently never knew that it could — prove. There is nothing to gain from preserving that possibility.” 2025 U.S. Dist. LEXIS 223697, at *4.²⁶

While *Poindexter*, *Borges*, and *Cabral-Gonzalez* resemble this matter in some respects, the unusual circumstances present here make the justification for dismissal of this case with prejudice even stronger. While the possibility of a viable prosecution in, for example, *Poindexter* and *Borges* seemed fairly unlikely, here the government has

²⁶ Our Court of Appeals’ decision in *Workman v. United States*, 255 A.2d 971 (D.C. 2021) does not apply to the unique facts of this case or suggest a different result. *Workman* rejected “a flat rule that the government engages in impermissible harassment any time it dismisses an indictment in the hope of reindicting the defendant under more favorable circumstances,” *id.* at 975, a broad proposition not propounded by Mr. Hearn or germane to his position here. *Workman* then went on to conclude that the trial judge had not abused her discretion by granting a dismissal without prejudice under the circumstances presented in that case. *Id.* at 977-78.

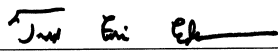
advanced no more than a “purely theoretical” possibility of such a prosecution, 9/4/26 Tr. at 11:15-19, without being able to define what type of evidence could permit it to go forward or where it would obtain such evidence. Moreover, dismissing this case without prejudice would leave Mr. Hearn in an acutely vulnerable position. While the defendants in the aforementioned cases would have endured uncertainty and stress had their cases been dismissed without prejudice, Mr. Hearn would be placed at risk of a much worse fate: the possibility that, due to the pressure that the President of the United States has placed on his subordinates in the Office of the United States Attorney for the District of Columbia over the past two months, he would be prosecuted for a crime that that same Office has determined he did not commit, and that his odds of future prosecution may be heightened by the nature and extent of his political activities.

The Court reiterates the strong presumption that dismissals of criminal cases are usually entered without prejudice; the undersigned has deferred to that presumption in countless cases. However, because the government’s legitimate interest in maintaining the possibility of a future prosecution seems so marginal, and because of the extraordinary possibility that Mr. Hearn will nonetheless face a meritless, politically motivated prosecution, the Court “has an obligation to protect him from the uncertainty [that a dismissal without prejudice] entails, and from what, objectively, would be harassment.” *Poindexter*, 719 F. Supp. at 12. Under these circumstances, the balance of factors requires a dismissal of the case with prejudice.²⁷

²⁷ Consistent with the precedents cited *supra*, the Court has balanced these factors and decided to dismiss the case with prejudice without determining whether the government acted in good faith. The government insists that it did so and emphasizes that the relevant inquiry focuses not on the government’s good faith in originally bringing the case, but in ultimately dismissing it. *Workman*, 255 A.3d at 978.

Here, the government’s decision to dismiss the case so quickly lends strong support to its contention that it was acting in good faith at the time it did so. Nonetheless, conclusively determining whether the

Accordingly, it is this 1st day of October 2026 hereby
ORDERED that this case is DISMISSED WITH PREJUDICE; and it is
FURTHER ORDERED that Defendant's Motion to Compel, filed August 18,
2026, is DENIED AS MOOT; and it is
FURTHER ORDERED that Defendant's Motion to Admit Photograph, filed
September 28, 2026, is GRANTED.



Todd E. Edelman
Associate Judge
(Signed in Chambers)

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government acted in good faith would require the Court to resolve the Defendant's August 18, 2026 Motion to Compel and to undertake other means of developing a more complete factual record on this issue. Given that the other relevant factors so strongly militate in favor of dismissal with prejudice regardless of whether the government acted in good faith, the undersigned sees no utility in pursuing this issue further at this time.