

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION—FELONY BRANCH**

UNITED STATES OF AMERICA	)	Case No. 2026 CF2 10237
	)	
v.	)	Judge Todd E. Edelman
	)	
DAVID HEARN	)	Trial Readiness: September 11, 2026
	)	

Government’s Motion to Dismiss the Indictment

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully moves to dismiss the indictment in this case. For the reasons set forth herein, this case should be dismissed without prejudice pursuant to Rule 48 of the Superior Court Rules of Criminal Procedure. In support of this motion, the United States submits as follows:

Based upon the initial reports provided by the Department of the Interior (“DOI”) and the U.S. Park Police (“USPP”), the United States Attorney’s Office for the District of Columbia (“USAO-DC”) presented the grand jury with evidence that damage to the Reflecting Pool was caused by vandals, including the defendant in this case, David Hearn. However, it was not until after the return of the indictment, that the DOI provided additional documents to the USAO-DC indicating 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. It was not until after these documents were produced that USAO-DC first became aware of information showing that the damage was the result of a botched installation and not vandalism as initially represented by DOI. Indeed, USAO-DC could only rely on the information provided by DOI that the damage was entirely caused by vandals, including the defendant in this case, David Hearn. Because these recently-produced materials significantly

undermine the evidentiary basis for the indictment initially supplied by the DOI and U.S. Park Police, the USAO-DC respectfully moves to dismiss the indictment without prejudice.

I. The Initial Information Provided to the Government

At the outset of the investigation into the damage at the Reflecting Pool, USAO-DC received barebones police reports from the United States Park Police (“USPP”) which is an agency within the DOI and under the jurisdiction of the DOI. The government requested “everything,” including all reports, all statements, witness statements, defendant’s admissions, citation notices, photographs, body worn camera footage, and surveillance footage, to include any and all inculpatory and exculpatory material from DOI relating to the instant case and the other cases where USPP had taken reports of vandalism related to the Reflecting Pool. Indeed, prosecutors specifically involved in the cases related to the Reflecting Pool made dozens and dozens of communications were made in an effort to identify and obtain the materials necessary to have all information to evaluate the case. After significant demands by USAO-DC, USPP provided the police reports and body-worn camera for roughly 10 individuals associated with the Reflecting Pool.

Specifically, the initial USPP report in the instant case, dated June 19, 2026, stated the following:

Upon contact with the individual detained, later identified as HEARN, David Carter (DOB: 04/17 /1959), Lieutenant Stone asked if he was pulling off pieces of the Reflecting Pool. HEARN denied and stated "No, I didn't pull any thing off." During the investigation, HEARN told Officer Hyman that he reached down into the Reflecting Pool to feel the temperature of the water. He noticed a big piece of material flapping in the water and began to grab at it. He was advised by a National Park Service employee that he could not touch it. HEARN stated that he stopped and walked over to his bike. He was then stopped and detained by the National Guard who brought him over to the Officers.

It was determined during the investigation that a witness observed HEARN record himself with his phone to reach into the Reflecting Pool water. HEARN then began to rip and pull at a chunk of liner material attached to the Reflecting Pool. A National Park Service employee told HEARN not to touch and rip the liner out. HEARN told the employee they were "awfully sensitive about the pool" and continued tugging at the liner until the National Guard stopped him.

Gerstein Affidavit, United States v. David Hearn, 2026 CF2 010237.

Further investigation by the government included interviews with two National Park Service ("NPS") employees, W-1 and W-2, who were both engaged in cleaning the interior of the Reflecting Pool. The defendant approached the area where they were working. W-1 stated they observed the defendant using his cellular telephone to take what the NPS employee believed to be video or a photograph(s) of the damage to the reflecting pool. The NPS employee, W-1, stated that the defendant then knelt, placed both hands into the reflecting pool—below the surface of the water—and started to "violently" rip and tug at a large portion of the blue pool coating. The NPS employee, W-1, asked the second NPS employee, W-2, to contact police and requested that the defendant not touch or rip at the coating. The defendant told W-1, that the NPS personnel were "awfully sensitive about the pool" and he continued to tug at the coating until National Guard soldiers arrived.

A third NPS employee, W-3, took a photograph of the area where the defendant was seen pulling the lining prior to the incident involving the defendant. Metadata associated with the photo indicates that it was captured at 2:55 PM on July 19, 2026, shortly before W-1 and W-2 observed the defendant aggressively pulling and further damaging this compromised are of the Reflecting Pool.



The photograph below was taken by NPS employee W-1 after the incident involving Hearn. Metadata associated with the photo indicates that it was captured on June 19, 2026, at 4:48 PM. A review of USPP body-worn camera shows the officers speaking with the defendant at 4:40 PM.



W-4, an employee specializing in maintenance and repairs employed by the National Park Service, stated that repairing the additional damage caused to the reflecting pool based on the defendant's conduct would cost over \$1000. DOI represented that nearly all of the damage to the Reflecting Pool was due to vandalism with only a small portion due to unidentified other causes.

On July 1, 2026, United States Attorney Jeanine Pirro and senior USAO-DC supervisors met with DOI employees, including NPS and USPP personnel, at the Reflecting Pool, which remained filled with water, making it difficult to observe the condition of the floor of the entire pool, which was mostly obscured as it covered with water. The DOI employees directed USAO-DC personnel to the particular area related to the defendant's conduct, but none of the DOI employees suggested that the poor condition of the Reflecting Pool was largely the result of failures during the process of installing the liner.

Armed only with DOI's representations that defendant caused more than \$1000 of damage to the Reflecting Pool, USAO-DC presented evidence to a District of Columbia Superior Court grand jury, which on July 2, 2026, returned an indictment charging the defendant with one count of felony destruction of property in violation of D.C. Code § 22-303.

Notably, USAO-DC was not in possession of any information from DOI indicating that any damage to the Reflecting Pool was caused by anything other than the actions of the defendant and other vandals who damaged the pool's lining.

II. New Information Provided by DOI to USAO-DC After Indictment

On July 17, 2026, as a defense expert inspected the now-drained Reflecting Pool, United States Attorney Pirro and senior USAO-DC employees once again visited the site and this time immediately noted extensive damage throughout the now-drained pool. It was at that time that USAO-DC first became aware of the significant damage throughout the pool and accordingly requested all documents from DOI concerning the how the pool was lined and all records regarding the installation of the lining.

Based on this request, USAO-DC received 695 megabytes of additional documents from DOI, which took days to review. These documents indicated a rushed and flawed installation process, with repeated failures of the lining during the installation process, and extensive peeling of the lining throughout the Reflecting Pool. This was the first time that DOI made USAO-DC aware of such information. Moreover, despite previously providing USAO-DC with "everything" related to all reports of vandalism at the reflecting pool, USPP—for the first time—notified USAO-DC of yet additional cases involving vandalism at the Reflecting Pool and other monuments, requiring USAO-DC to once again repeatedly follow-up and obtain police reports and body-worn camera for those additional incidents that happened close-in-time with the instant case.

USAO-DC's review of the recently-provided documents by DOI revealed that Atlantic Industrial Coatings ("AIC") was selected as the sole-source contractor for installation of the Reflecting Pool lining. Installation began on May 5, 2026, but was delayed on May 6, 2026, due to heavy rainfall. The following day, May 7, 2026, installation continued with cleaning and organizing the construction site, and the spraying of Rhino 406 coating for 68,000 square feet of the Reflecting Pool surface. (The total size of the pool is approximately 340,000 square feet). Installation of the Reflecting Pool lining required multiple coats of Rhino 406 coating followed by two coats of Pipeliner 5000 coating. There are also numerous expansion joints that run both perpendicularly through the pool and around the perimeter that allow for the underlying concrete slabs that make up the floor of the pool to expand and contract as they heat and cool during the day, which requires different application to seal the expansion joints.

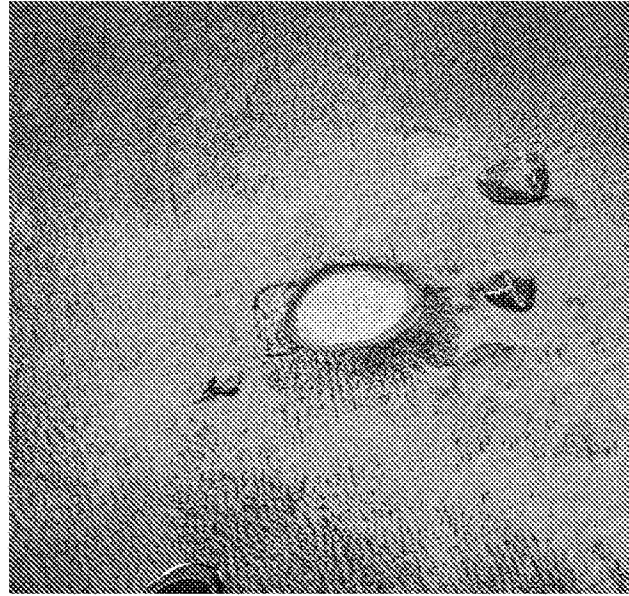
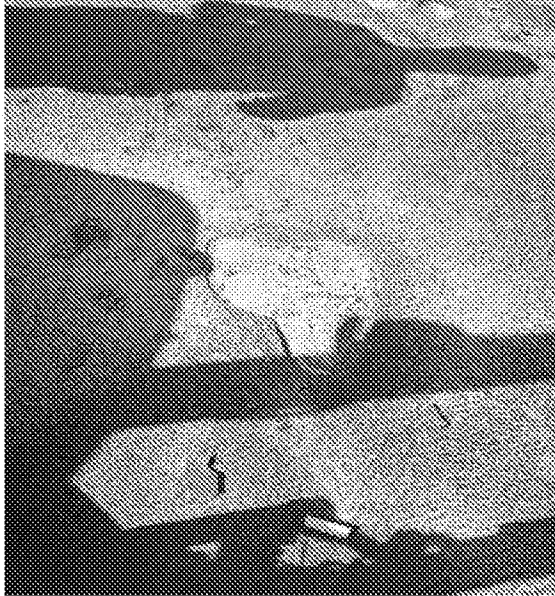
In the days that followed, crews continued to spray additional coats of lining material, including Rhino 406 and Pipeliner 5000. However, weather delays continued to hamper installation. No installation activity occurred on the afternoon of Sunday, May 10, and throughout the day of Monday, May 11, because of rain. An employee with Brown Construction Services, Inc., a contractor responsible for monitoring AIC's progress, noted in a May 7, 2026, email that "it appears AIC is significantly behind schedule." This email was sent to several DOI employees, and revealed a sense of urgency and rushing.

Spraying of Rhino 406 and Pipeliner 5000 continued on May 12, 2026, and the days that followed, with liner installation being 56% complete on Thursday, May 14, 2026. Unfortunately, a setback occurred on Saturday, May 16, when a second trial installation of an expansion joint sealant failed and different sealant solutions needed to be explored. Further delays occurred starting on Monday, May 18, when AIC ran out of Rhino 406 product for spraying, with additional

shipments expected on May 19 from California and British Columbia. Concerns were also raised by AIC concerning the weather forecast of rain for several days starting mid-week. Communications among DOI employees reveal significant concern about meeting the project's deadlines, and worry about application errors.

On May 20, AIC received more Rhino 406, allowing for spraying to continue. That same day, a Quality Control inspector noted blistering in the finished portions of the lining and alerted AIC of the need to provide repairs. Heavy rains on the evening of May 20 required that water be pumped out of the Reflecting Pool to enable mechanical drying of the surface to occur. On May 21, the third test of sealing of the expansion joints was reviewed by the National Park Service and found to be acceptable, including the spraying of 11-35 sealant around the expansion joints. Still, consistent heavy rains prevented additional spraying from Thursday, May 21, 2026, through mid-day on Wednesday, May 27. Pipeliner 5000 installation began again that day, but only reached an 81% completion rate, only a 1% improvement from the 80% completion rate noted a week before.

With the return of better weather, progress was again made starting on May 28 with all Pipeliner 5000 installed by Sunday, May 31. Insertion of backing rods and caulking around the perimeter also proceeded. The blistering noted by a Quality Control inspector was also remediated (*see* photographs of the blistering below).



Repairing/fixing blisters/bubbles at Bay 02

Starting on May 29, 11-35 sealant was sprayed over perpendicular expansion joints and starting on June 1, the 11-35 sealant was sprayed around the perimeter expansion joints to cover the gap between where the Pipeliner 5000 was applied and the caulking of the expansion joints. It was the 11-35 sealant that was later peeled up in the incident involving the defendant.

The spraying of 11-35 sealant continued through Saturday, June 6. On June 7, the bulk of the work was complete, and water began to refill the pool. On June 9, a final inspection was completed, and crews then cleaned the site and removed the equipment, in time for the UFC fight scheduled to occur on the White House grounds on June 14, 2026.

But only two days later, on June 11, 2026, an NPS engineer was alerted to peeling of the Reflecting Pool lining. He sent an email at 12:00 p.m. that day to other NPS and DOI personnel detailing the following:

Hello All,

This morning, an area of the reflecting pool coating was identified to be peeling. NAMA staff was notified and I was able to inspect the area.

Below are some notes on my observations and conversation with the contractor (AIC).

- Only the top layer of liner has peeled. This is very thin and will not impact the strength of the liner.
- The color underneath the peeled area is still dark, “American Flag” blue.
- The total peeled area is small, less than 1 square foot and noncontinuous.
- The contractor stated that the peeled area was “overspray” from spraying the perimeter joint with polyurea.
- I stated my concern that this “overspray” along the perimeter of the pool could lead to a 1’-2’ strip that is vulnerable to peeling. The contractor would not confirm in field if this was or wasn’t a risk.
- The polyurea liner that has peeled does not float in water, so should not be highly visible to visitors and can be vacuumed out along with sediment and algae during the normal cleaning process.
- I walked the perimeter of the pool and did not identify any additional peeling areas.

Notably, the engineer’s email recounted AIC’s explanation that peeling areas around the perimeter were “overspray” and that a one-to-two-foot strip was vulnerable to peeling. This was the area along the perimeter that the defendant is alleged to have pulled up. He also stated that the liner that has peeled does not float in the water and that peeling “will not impact the strength of the liner.” The engineer provided photographs of the peeling area:









All of these concerns were raised by the NPS engineer on June 11, eight days before the defendant was arrested and the same day that fencing was removed from the site.

III. Subsequent Findings from DOI Contractors

Following the initiation of this prosecution, DOI and contractor personnel inspected the Reflecting Pool on Monday, July 20, 2026, after it had been drained for repairs. BCS Construction Engineering made a number of findings, including that:

2. Each of the coating failures along the perimeter of the pool (most noteworthy in Bays 04, 06, 07 and 09) were examined in detail. Various theories were discussed as to the cause of the failures in the interface between 11-35 and Pipeliner 5000. An apparent cause of failure may be the application of too little or too much XP bonding agent.
3. At each coating failure along the perimeter, [REDACTED] of AIC proposed the following remediation: remove all existing failed material as required until firmly adhered material is encountered, power wash the exposed area to clean the substrate; grind/abrade the substrate; apply XP bonding agent; apply 11-35, apply Pipeliner 5000 for texture.
4. Many areas were observed where Pipeline 5000 was applied for texture over 11-35 and oversprayed onto existing Pipeliner 5000 and hence had not bonded. This loose material can be removed by powerwashing.

Although “[v]arious theories were discussed as to the cause of the failures,” overspraying and a failure of the coatings to bond predominate in the report. Three days of repairs were estimated by AIC to address the issues identified. Photographs from the report show the extent of damage to the pool caused by over spraying and delamination. Damage was noted throughout the Reflecting Pool, and not just at the perimeter.

When the group also discussed whether additional damage would become apparent, an AIC representative stated as follows:

8. The group discussed whether or not the fact that deficiencies manifested so soon after the pool was filled and placed back into service might indicate that further deficiencies will continue to crop up going forward over time. [REDACTED] expressed the opinion that “99% of anything that was going to fail would show up within a couple of weeks of finishing the work” and that it would be unlikely that many more would show up over time, but that there was no way to guarantee that.

Given this statement, it is not particularly surprising that damage was readily apparent on June 11 when the NPS engineer conducted his examination. Nor is it surprising that such damage was present eight days later, on June 19, when the defendant pulled on the lining.

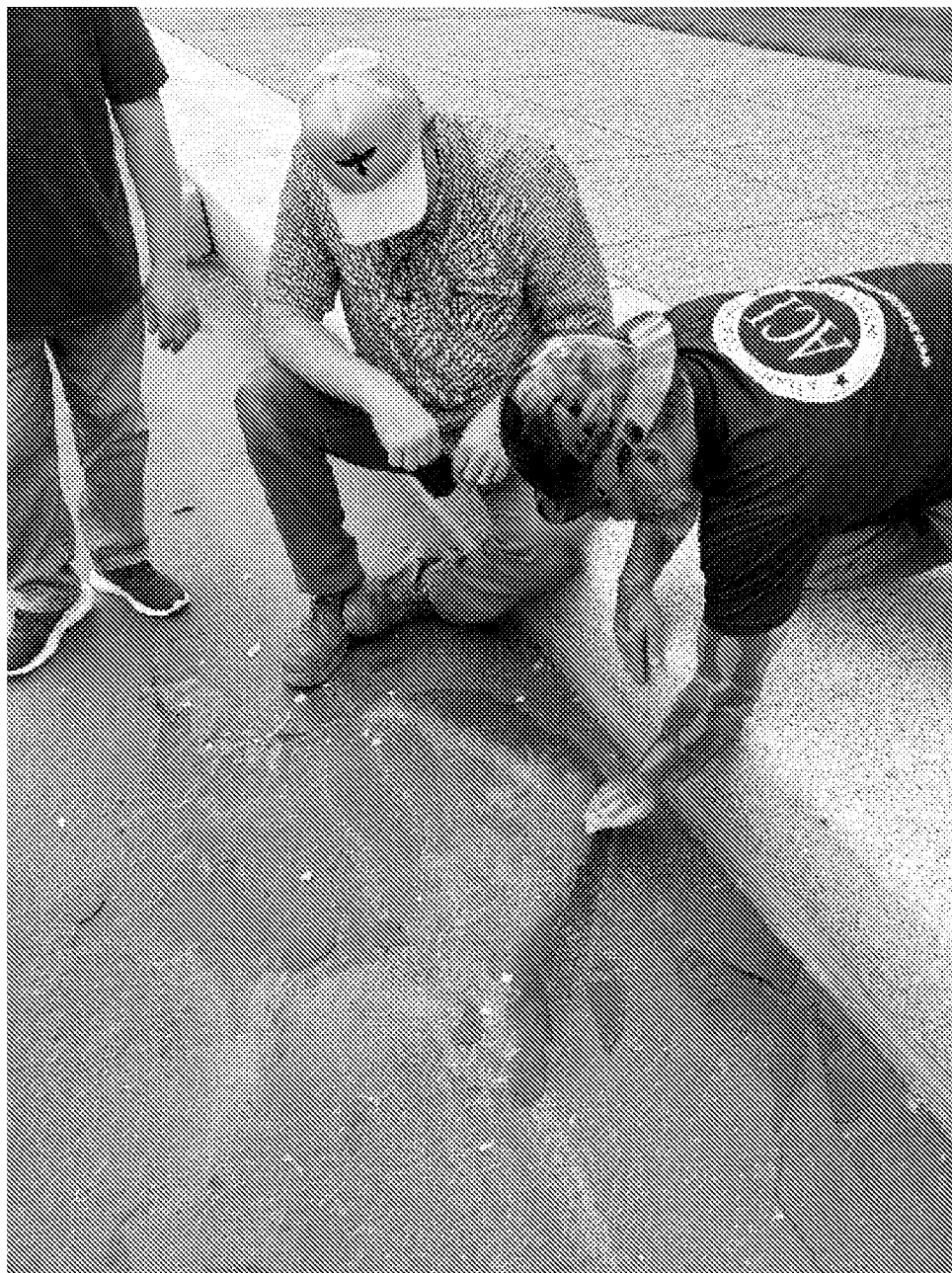


Photo #2 – 3rd Party Inspector from Atlantic Coating Inspection
assisting in determination of reason for failure



Photo #5 – Examination of delaminated coating at tranverse expansion joint between Bays 04 and 06

IV. Grounds for the Government's Motion to Dismiss

Pursuant to the Department of Justice's Principles of Federal Prosecution, a criminal prosecution should only be maintained if the defendant "will more likely than not be found guilty beyond a reasonable doubt by an unbiased trier of fact and that the conviction will be upheld on appeal." Justice Manual 9-27.220 (Comment). Based upon USAO-DC's review of the record in light of the materials only recently disclosed by DOI, the government moves to dismiss the indictment without prejudice.

DOI provided less than fulsome information at the outset of this case. However, the information subsequently demanded by USAO disclosed by DOI—which was not known to the prosecutors or the grand jury before the return of the indictment—strongly suggest that a rushed and botched installation by AIC, the primary contractor, led to the damage to the lining of the Reflecting Pool. It was not until USAO-DC repeatedly reached out to DOI dozens and dozens of times that DOI slowly started trickling information to USAO-DC. Had DOI been forthcoming with the information clearly in its possession, the government would not have sought a grand jury indictment. Furthermore, prosecutors have an affirmative obligation pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), the Jencks Act, 18 U.S.C. § 3500, Rule 16 of the Superior Court Rules of Criminal Procedure, and Rule 3.8 of the Rules of Professional Conduct to produce information to the defense. DOI's failure to fully and accurately provide information to USAO-DC undermined the government's ability to abide by these responsibilities.

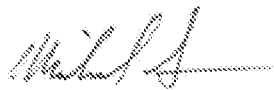
Specifically, the newly released documents reveal that work on installing the lining almost immediately fell behind, due to a combination of very rainy and windy weather, repeated failures of testing on the sealing of the expansion joints, and delays in obtaining sealing product at the worksite. The rush to complete the project led to hasty and botched work that was not remediated before the project was finished and the fencing removed.

Almost immediately after work was initially completed, peeling was observed along the pool perimeter. The NPS engineer's June 11, 2026, email stated that the cause of the damage was contractor error via "overspray"; that the peeled lining would not float; and that the peeling would "not impact the strength of the liner." The engineer's report also suggests that removing the liner at the perimeter would have had no negative impact on the economic value of the liner. Moreover, the July 20, 2026, inspection by contractors confirmed that overspray and delamination had occurred, again pointing to contractor error. Finally, a recent visual inspection showed damage throughout the Reflecting Pool, even in the middle of the pool, where a vandal would not likely attempt to peel the lining. Given all of this newly discovered information, it is difficult to attribute the widespread damage to the Reflecting Pool to vandalism, let alone to establish that fact beyond a reasonable doubt.

For all of these reasons, the government, in the exercise of its prosecutorial discretion, respectfully requests that the indictment be dismissed without prejudice.

Respectfully submitted,

JEANINE FERRIS PIRRO
UNITED STATES ATTORNEY



Michael P. Spence
Assistant United States Attorney
Chief, Superior Court Division

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Order

Upon the government’s motion to dismiss the indictment, the government’s motion is
GRANTED and the indictment is **DISMISSED WITHOUT PREJUDICE**.

Todd E. Edelman
Associate Judge

Copies to:

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Steven Levin, Esq.
Norman Eisman, Esq.
Counsel for the Defendant