

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 25 CR 693
)	
MICHAEL RABBITT,)	Judge April M. Perry
KATHERINE MARIE ABUGHAZALEH,)	
ANDRE MARTIN, and BRIAN STRAW)	
)	
)	
Defendants.)	

**DEFENDANTS’ MOTION AND APPLICATION FOR
ATTORNEYS’ FEES AND LITIGATION EXPENSES
PURSUANT TO THE “HYDE AMENDMENT”, 18 U.S.C. § 3006A**

Defendants Michael Rabbitt, Katherine Marie Abughazaleh, Andre Martin, and Brian Straw (collectively, “Defendants”), by and through their respective undersigned counsel, and pursuant to the Hyde Amendment, 18 U.S.C. § 3006A, and the provisions of the Equal Access to Justice Act, 28 U.S.C. § 2412 (“EAJA”), hereby move and submit this application for the payment of their attorneys’ fees and litigation expenses in this case. The government’s misconduct before the grand jury, which compelled the U.S. Attorney to dismiss the remaining charges in the superseding information on May 21, 2026, shocks the conscience. The efforts to cover up that misconduct are arguably worse. This wide-ranging misconduct, both outside of and before the Court, cast serious doubts on the government’s prior representations, including the lack of any outside influence and direction from

Washington D.C. in bringing these charges, which raises concerns beyond the problematic presentation of the case to the grand jury and subsequent cover-up.¹ The law provides a remedy for those, like Defendants here, who are subject to this type of vexatious, bad faith, and frivolous litigation.

Even though the complete factual record concerning the prosecution of Defendants and the reasons for the sudden dismissal must still be developed, due to the Hyde Amendment's 30-day filing window, Defendants file this Motion now to preserve their claims.² As such, Defendants expressly reserve the right to amend and supplement this Motion, particularly as their investigation into the government's

¹ As much as the U.S. Attorney may seek to deflect and pin the blame on a single prosecutor who, along with another AUSA, presented the case to the grand jury, the Court should not accept that convenient excuse which is clearly meant to deflect, minimize, and contain. Many questions remain about how the U.S. Attorney and those under his direction acted in response to the “no bills” that grand juries returned in Operation Midway Blitz-related prosecutions, including this very case where the grand jury apparently first rejected the government's case against these Defendants—questions that are only heightened by a “Special Report” issued by the U.S. Attorney on today's date, June 2, 2026, in which he *acknowledges personally appearing before this Grand Jury on October 23, 2025, and asking that any grand juror who was “struggling with a certain type of cases, such as immigration cases” to identify themselves*. Similarly, questions remain about whether the U.S. Attorney had any communications and interactions with DOJ officials, namely now-acting U.S. Attorney Todd Blanche and others on his behalf, before or while this grand jury was considering these now-dismissed charges and these Defendants. Finally, despite the Office's attempts to lay the blame solely at a single AUSA's feet, she was not working for the Office when the repeated denials and misleading statements (or non-statements) about the misconduct were made to the Court, including redacting all evidence of the misconduct in the transcripts with the specific intent to keep the Court in the dark and hope the misconduct would never see the light of day. The bad faith in this prosecution is evident, and vestiges remain. Thus, even *after* the stunning proceedings before the Court on May 21, 2026, later that day the U.S. Attorney himself commended the very prosecutors involved in this case's misconduct as “*courageous*” and having “*fought for the rule of law.*” (U.S. Atty Broutros Office-wide email of May 21, 2026).

² The government first announced its intention to dismiss the conspiracy charge in Count One with prejudice on April 29, 2026, but did not file a motion to do so until May 6, 2026 (Dkt. 147), which was granted and formally dismissed on May 8, 2026 (Dkt. 155).

misconduct—whether currently exposed or as yet unknown—remains ongoing and also because this Court has indicated it intends to conduct further hearings on the misconduct.

I. Timeline of the “Cover-up” Conduct by the Government.

The Court’s discovery and revelation of the prosecutors’ serial and severe misconduct before the Grand Jury was shocking. What is of at least equal, if not greater concern, however, is the willful and persistent cover-up of that conduct by the government over the past six months. To date, we believe only a portion of the conduct constituting the cover-up has been brought to light, and further discovery is warranted for Defendants to properly present their Hyde Amendment claim. A brief timeline of that conduct known *to date* is summarized as follows:

October 9, 2025	As the Court described at the May 21, 2026, hearing, in the very first appearance before the grand jury on this case the prosecutor engaged in “improper prosecutorial vouching to the grand jurors, with the AUSA putting her personal credibility and trustworthiness on the line in support of the charges.” (5/21/2026 Tr. at 22, 34). ³ The Grand Jury returned a “No Bill” that day.
October 16, 2025	Prosecutors again present this case to the Grand Jury. After some Grand Jurors expressed opposition to the government’s case, “the prosecutor excus[ed] grand jurors who disagreed with the government’s case from the deliberations process.” (5/21/2026 Tr. at 23). The Front Office having been alerted to this misconduct “in realtime” directed that the Grand Jury proceedings terminate for the day (5/21/2026 Tr. at 51), and the

³ Because the grand jury transcripts remain under seal for now, counsel reference the Court’s summary of the prosecutor’s vouching, rather than the prosecutor’s actual words, which the Court has read.

	testimony before the Grand Jury “ended abruptly.” (5/21/2026 Tr. at 33).
October 23, 2025	<p>On October 23, the government presented this case to the Grand Jury for the third time.</p> <p>As disclosed in a “Special Report of the United States Attorney’s Office for the Northern District of Illinois Regarding Grand Jury Appearances,” appeared in front of the Grand Jury and stated the following, amongst other comments:⁴</p> <p>“If there’s anyone here who is struggling with a certain type of cases, such as the immigration cases or other cases where they do not believe that they can set aside their personal, their personal emotions, that they cannot listen and deliberate honestly and objectively, I would ask that you raise your hand and identify yourself, because we have a different procedure for that. And so is there anyone here who thinks that he or she cannot—and this is no, by the way, no different than if we were actually in a jury and we were picking a jury. The judge would engage in this type of colloquially with every single juror to make sure that the person, both the government as well as the defendant has a fair juror. Fairness is the key to the operation of our system.</p> <p>So is there anyone here who thinks that he or she cannot be fair, cannot be openminded, cannot receive evidence, cannot set aside their personal feelings on any case, immigration or otherwise, child exploitation, immigration, whatever it is. Anyone who thinks they can’t do it, please raise your hand.”</p> <p>During that third session the AUSA stated on the record that she had had <i>ex parte</i> contact with one or more grand jurors. (5/21/2026 Tr. at 53).</p> <p>After this third attempt, and after U.S. Attorney Boutros delivered his comments quoted above, the Grand Jury returned the indictment requested by the prosecutors.</p>
October 29, 2025	The DOJ issues a press release following the return of the indictment entitled, “Federal Grand Jury in Chicago Indicts Six Individuals on Charges of Impeding Federal Agent Engaged in Immigration Enforcement Operations.” Both

⁴ This report was released on June 2, 2026, shortly before the filing of this pleading, and is available here: <https://www.justice.gov/usao-ndil/media/1443716/dl?inline>.

	U.S. Attorney Boutros and then-Deputy Attorney General Todd Blanche were quoted in the press release. Mr. Blanche’s comments included the observation that “No one is above the law and no one has the right to obstruct it.”
December 3, 2025	Defendants make their first written request for grand jury materials, asking the government for, among other things, “All grand jury transcripts and minutes, including but not limited to instructions given to the grand jurors on the law” and “[a]ll exhibits shown to the grand jurors.” Ex. A, Requests 9 and 10. <i>See also</i> Dkt. 94-2.
December 8, 2025	The prosecutor—the same who personally committed the several instances of severe misconduct before the Grand Jury in seeming desperation to get an indictment returned—responded to Defendants’ Dec. 3 letter, refusing to provide the Grand Jury transcripts or exhibits, and writing in part, “ <i>[t]his is a relatively simple, straightforward indictment, that presents no exceptional circumstances</i> , and you have not cited any in your letter or in any discussions with us. Since the case was filed, various defense counsel has stated repeatedly only that they are ‘interested’ in how we presented this case to the grand jury. Your curiosity is not an ‘exceptional circumstance.’ You all know the law, or can research the law, <i>and [Defendants] have no reason to believe that we presented anything other than the law.</i> ” Ex. B, Govt. Letter dated 12/8/25 (emphasis added) (Dkt. 94-5).
January 21, 2026	<p>The government sent a response to Defendants’ Dec. 1, 2025 (Dkt. 94-1) and Jan. 9, 2026 (Dkt. 94-4) discovery letters. The prosecutors wrote “those letters request discovery based on your expressed concern that defendants in the above-captioned case were ‘selectively targeted for prosecution’” <i>but said that defendants “have not satisfied your burden of overcoming the presumption that we have not violated the equal protection clause” and “have failed to raise evidence that we have acted with improper motive or that an external agency prevailed on us to seek an improper indictment, because neither is true.</i>” Ex. C at 2, 5 (emphasis added). <i>See also</i> Dkt. 94-6.</p> <p>The prosecutors pointed to the standard for selective prosecution discovery in the 2nd Circuit being a showing</p>

	that “(1) the prosecutor harbored genuine animus toward the defendant, or was prevailed upon to bring the charges by another with animus such that the prosecutor could be considered a ‘stalking horse,’ and (2) he would not have been prosecuted except for the animus.” The prosecutor wrote that defendants had not shown any of these circumstances “ <i>because they do not exist.</i> ” <i>Id.</i> at 5 (emphasis added). The prosecutor—who knew all the now-public misconduct that had occurred before the Grand Jury because she committed it—concluded by writing “ <i>a motion for discovery based on a claim of selective prosecution in this case borders on frivolous.</i> ” <i>Id.</i> at 7 (emphasis added). ⁵
February 26, 2026	At an in-court hearing, in response to Defendants’ motion for a Bill of Particulars, the new lead prosecutor stated that the government was “going to voluntarily redact a portion of the charge that’s charged in three separate fashions,” but before doing so, “We’d like to talk to our supervisors downstairs, <i>including the U.S. Attorney.</i> ” (2/26/2026 Tr. at at 4-5) (emphasis added) Dkt. 90.
April 8, 2026	Defendants file a Supplemental Motion to Compel Disclosure of Grand Jury Transcripts detailing the presentment of the law on the 18 U.S.C. § 372 conspiracy charge and any related exchanges in light of the narrowing of the indictment. Dkt. 118.
April 9, 2026	Per the Court’s minute entry, “The Government’s response to Defendants’ motion to compel disclosure of the grand jury transcripts 118 is to be filed by 4/20/2026. To the extent the Government does not object to an <i>ex parte</i> in camera review of the transcripts, the relevant portions of the transcripts as outlined in the motion may be provided to the Court by 4/20/2026 in lieu of a written response.” Dkt. 119.
April 20, 2026	In an unopposed motion for an extension the AUSAs requested “an extension of time until no later than April 23, 2026, to provide the Court all relevant portions of the transcripts as outlined in the defense motion, for an <i>in camera</i> review. This extension will allow the government

⁵ Between February 2 – February 13, 2026, the lead prosecutor who had presented this case thrice to the Grand Jury and had been the lead trial attorney for the government moved to withdraw from the case, and two new AUSAs filed their appearances, joining the second-chair AUSA who had been on the case from its inception, including in the three appearances before the Grand Jury before an indictment was obtained.

	the opportunity to obtain all relevant transcripts to provide the Court, which it has been seeking to obtain.” Dkt. 121. The Court granted this extension. Dkt. 123.
April 23, 2026	Having had two full weeks since the Court’s April 9, 2026 Order to produce the transcripts for <i>in camera</i> review—and fully aware of the misconduct contained in those transcripts—the government submitted portions of grand jury transcript in camera to the Court <i>but with the portions showing obvious misconduct fully redacted.</i>
April 24, 2026	After receiving the redacted transcripts, in a minute entry, the Court wrote, “The Government’s motion to file grand jury transcripts under seal [128] is granted. This matter is set for a hearing 4/29/2026 at 10:30am in person in Courtroom 1725. <i>The Government is asked to bring to the hearing fully un-redacted versions of the transcripts it has filed under seal (which currently contain redactions within the colloquy portions)</i> as well as a copy of any presentation(s) or document(s) shown to the grand jurors summarizing the law.” Dkt. 130 (emphasis added).
April 27/28, 2026	The U.S. Attorney states that he first becomes aware of the vouching that took place in the Grand Jury. (5/21/2026 Tr. 51).
April 29, 2026	At the beginning of the in-court hearing on April 29, the Court asked the government “[i]n terms of the grand jury transcripts, let me start by asking the government. Do you object to those being provided to the defendants?” (4/29/2026 Tr. at 3) (emphasis added) Dkt. 142. The lead prosecutor responded, <i>“I think that we’re going to find that issue is moot. We’re going to move to dismiss Count 1, and we are filing as we speak, a superseding information on the remaining counts with the remaining four defendants.”</i> <i>Id.</i> at 3-4. He continued “we have brought you, in compliance with your order, the unredacted versions; <i>but since we are moving to dismiss Count 1 and their motion and your order were directed at that, I think that the issue should be moot.”</i> <i>Id.</i> at 4. The Court, likely relying on the presumption of regularity and the government’s repeated statements that there was nothing amiss in the way this case was indicted, agreed for

	<p>the time being, but told Defendants they had leave to file something if they believed it was not mooted. <i>Id.</i> at 5.</p>
<p>May 4, 2026</p>	<p>On May 4, 2026, in the wake of the government telling the Court it would dismiss the conspiracy count and therefore “moot” Defendants’ request in light of the Court’s Order to produce unredacted copies of the Grand Jury transcripts, Defendants filed another Motion seeking disclosure of the Grand Jury transcripts (Dkt. 143) (along with a separate Motion to Dismiss Count 1 With Prejudice, (Dkt. 144)) in large part because of the suspicious nature of the government’s conduct in moving to dismiss the lone felony count—after 6 months of vigorously defending it—and thereby seeking to avoid having to show even the Court those transcripts.</p> <p>In the motion for disclosure, Defendants wrote, “There are, realistically only three plausible explanations for what the grand jury transcripts contain—each troubling in its own right—that would lead the government to endure yet another public black eye by unceremoniously announcing its intent to dismiss the felony conspiracy count less than a month before trial:</p> <ol style="list-style-type: none"> 1. The AUSA mis-instructed the grand jury on the law. 2. The AUSAs failed to instruct the grand jury on the law at all. 3. <i>There are interactions between the AUSA and the grand jury which are otherwise improper or prejudicial.</i>” <p>Additionally, the Defendants argued “<i>if the relevant grand jury minutes contain interactions between the AUSA and the grand jury that is otherwise improper or affects the validity of the indictment or the grand jury process, that too should be disclosed.</i>” The fact that portions of the government’s colloquy with the grand jury was withheld from this Court for its in camera, <i>ex parte</i> review after six months of aggressive litigation, itself, raises serious concerns.” Dkt. 143 at 9, 11 (emphasis added).</p>
<p>May 6, 2026</p>	<p>On May 6, the government responded to Defendants’ renewed motion for an <i>in camera</i> inspection of the Grand Jury minutes by stating:</p>

	<p>“The second motion renewed defendants’ efforts to obtain grand jury transcripts regarding the legal instructions the government provided pertaining to former Count One of the obviated and inoperative original indictment, <i>and speculated about what defense counsel histrionically called a ‘time of mounting national distrust in the Department of Justice’s use of the grand jury process.’</i>” Dkt. 147 at 3 (emphasis added).</p> <p>Immediately after this statement the government concluded, <i>“In order to alleviate defendants’ stated concerns, and avoid what would surely be further unnecessary and time consuming litigation, not to mention a waste of this Court’s resources, the government hereby formally moves to dismiss Count One of the original indictment with prejudice.”</i> <i>Id.</i> at 4 (emphasis added).</p> <p>After filing the motion to dismiss (Dkt. 147), the government emailed the courtroom deputy and wrote, “In our view, that resolves the motion to dismiss Count One filed by defendant Martin and moots the motion for disclosure filed by defendant Straw that are scheduled for tomorrow morning at 8:30.” Defense counsel opposed the cancellation of the hearing, and counsel for Straw further asked the government to “bring at least one copy of the unredacted transcript to court.” The government responded, “No.” (Dkt. 191).</p>
<p>May 7, 2026</p>	<p>At the hearing before the Court on May 7, the Defendants again argued for disclosure of the Grand Jury transcripts based on suspected prosecutorial misconduct before the Grand Jury. In response to those arguments, the Court stated, <i>inter alia</i>, “And to be clear I have seen about 99 percent of the transcripts.⁶ There were several lines in the middle of things that were redacted, and I do not know what those were. But I have seen most of it.” (5/7/2026 Tr. at 7-8). The government did not correct this obvious misimpression.</p>

⁶ What we now know and what the government knew then is that this statement was incorrect; the Court was missing significant sections of the transcripts because the government withheld entire pages from the Court and never did anything to correct the Court’s stated misconception.

	<p>Defense counsel then argued that dismissal with prejudice could be warranted if there was prosecutorial misconduct before the Grand Jury. The Court responded, “And I think that would be a good argument if it was purposeful misconduct. If it was inadvertent, I don’t think it would be.” (<i>Id.</i> at 9-10).</p> <p>Shortly thereafter, the Court stated, “Again, there are probably less than 20 or 30 lines out of the three transcripts that were redacted, so ...” (<i>Id.</i> at 10). The government did not correct this obvious misimpression.</p>
<p>May 18, 2026</p>	<p>At the Pre-trial conference, Defendants again renewed their request for the Court to look at the Grand Jury transcripts in their unredacted form. Dkt. 185, Tr. at 62.</p> <p>The Court said to the government, “So at the moment, ... Mr. Parente’s request is just that I look at the redacted portion. <i>I want to say there were like 15 lines redacted. If I had to guess, it seems like those were probably related to IT issues playing the video, but I couldn’t tell and that’s why I asked for it.</i> Do you have any objection to me just seeing the lines that were redacted?” <i>Id.</i> at 63 (emphasis added).</p> <p>The lead AUSA responded, “No. We offered that weeks ago,” adding “I can go back and look and see what we gave you and see what we redacted.” <i>Id.</i> at 63-64. The government again did not correct the obviously false impression the Court had of the true state of affairs.</p>
<p>May 21, 2026 Court Session 1</p>	<p>At the hearing on May 21, 2026, the Court summarized the prosecutorial misconduct it had uncovered relating to the Grand Jury, as well as the government’s failure to be candid with the Court:</p> <p>“... I was incredibly shocked by the redactions that were made. I have never seen the types of prosecutorial behavior before a grand jury that I saw in those transcripts.” (5/21/2026 Tr. at 22).</p> <p>The Court then briefly summarized the misconduct it had found:</p> <p>“First, improper prosecutorial vouching to the grand jurors, with the AUSA putting her personal credibility and trustworthiness on the line in support of the charges.</p>

	<p>Second, improper prosecutorial communications of a substantive nature with the grand jurors outside of the grand jury room.</p> <p>And, third, the prosecutor excusing grand jurors who disagreed with the government’s case from the deliberations process.</p> <p><i>Which brings me to problem Number 4, which is the fact that all of this was redacted out of the versions of the transcripts that I got. And frankly, it is that that I find the most problematic.</i></p> <p>I do believe deeply in the presumption of regularity and that most government attorneys are doing the best they can to do the right thing. That trust has been broken.” (5/21/2026 Tr. at 22-23 (emphasis added)).</p> <p>Among other things, the Court stated, “Also, what I think rears its head again is this idea of vindictive prosecution. We all took the government attorneys’ word on a great many things. I, at the time, was operating on a presumption of regular grand jury proceedings, which these clearly were not.” <i>Id.</i> at 24-25.</p>
<p>May 21, 2026 Court Session 2</p>	<p>At the afternoon session on May 21, the U.S. Attorney appeared personally before the Court and, in light of the misconduct discovered by the Court, moved to dismiss all charges against all Defendants with prejudice. (5/21/2026 Tr. at 49-50).</p> <p>The U.S. Attorney stated, <i>inter alia</i>, that:</p> <ul style="list-style-type: none"> - he had “spoken extensively to the prosecutors” about this matter and the redactions made to the Grand Jury transcripts. (<i>Id.</i> at 50); - “With respect to the excusing of grand jurors that took place, which was the second time that the prosecutor sought to return an indictment, that is an issue that I was aware of in realtime. And once I became aware of it, I immediately called off that grand jury session. I then reached out to the chief judge to make her aware of what had happened, because she supervised the grand jury.” (<i>Id.</i> at 51);

	<ul style="list-style-type: none"> - he became aware of the AUSA’s vouching before the Grand Jury on “either April 27 or the 28th. And immediately when I learned about that vouching, the next day I moved to dismiss the indictment.” (<i>Id.</i> at 51); and - He “was completely unaware of any <i>ex parte</i> communications that took place in the third instance [the Oct. 23, 2025 Grand Jury session] until I became aware of the grand jury transcripts [on April 27 or 28, 2025]. And within the next day or 24 hours thereafter, we immediately dismissed Count 1.” (<i>Id.</i> at 52-53).
<p>May 21, 2026 Evening</p>	<p>The U.S. Attorney sent an Office-wide email about this case and commended the prosecutors involved in this case as “<i>courageous</i>” and having “<i>fought for the rule of law.</i>” Jason Meisner, <i>Fallout begins in ‘Broadview Six’ case meltdown as prosecutor loses Washington posting</i>, CHICAGO TRIB., May 22, 2026 (emphasis added), https://www.chicagotribune.com/2026/05/22/fallout-from-broadview-six-case/.</p>

In sum, it was only after the Court required the government to produce the full, unredacted Grand Jury transcripts that the “shocking” prosecutorial misconduct before the Grand Jury came to light. And it was only the ***outing*** of that severe and prejudicial misconduct which caused the U.S. Attorney immediately to dismiss all charges against the four Defendants – because the ***fact*** of the prosecutors’ misconduct had been well-known to all the AUSAs involved in the case, and to the U.S. Attorney himself for months (as to certain misconduct known to the ‘front office’ in real-time when it occurred in October, 2025, including the prosecutor kicking out members of the Grand Jury who disagreed with the prosecutors’ request for an indictment), and

for weeks (as to the vouching), and all efforts thus far had been to *deny* and *conceal* that misconduct from both the Court and the Defendants.

Dismissal when faced with these sordid facts, however, cannot absolve the government from its misconduct, nor immunize it from providing further information about it. Further targeted discovery, therefore, is necessary for Defendants to fully make out their Hyde Amendment claim, and Defendants will be filing a Motion for Discovery in relation to this Hyde Amendment Application/Motion.

II. LEGAL STANDARDS

The Hyde Amendment, located in a Statutory Note to 18 U.S.C. § 3006A, allows a prevailing party to recover reasonable attorney's fees if it can be shown that the government's case was vexatious, frivolous, or in bad faith. *See United States v. Sriram*, 482 F.3d 956, 958-89 (7th Cir. 2007), *vacated on other grounds*, 52 U.S. 1163, 128 S. Ct. 1134, 169 L. Ed. 2d 946 (2008) (Hyde Amendment "authorizes the court in a criminal case to award a reasonable attorney's fee to 'a prevailing party, other than the United States,' if the court finds that the government's position was 'vexatious, frivolous, or in bad faith.'").

In relevant part, the Amendment provides:

[T]he court, in any criminal case ... may award to a prevailing party other than the United States, a reasonable attorney's fee and other litigation expenses, where the court finds that the position of the United States was vexatious, frivolous, or in bad faith, unless the court finds that special circumstances make such an award unjust. Such awards shall be granted pursuant to the procedures and limitations (but not the burden of proof) provided for under Section 2412 of title 28, United States Code [the Equal Access to Justice Act, "EAJA"]. To determine whether to award

fees or costs under this section, the court, for good cause shown, may receive evidence *ex parte* and *in camera* (which shall include the submission of classified evidence or evidence that reveals or might reveal the identity of an informant or undercover agent or matters occurring before a grand jury) and evidence or testimony so received shall be kept under seal[.]

18 U.S.C. § 3006A (Pub. L. 105—119, Title VI, § 617, Nov. 26, 1997). Importantly, a defendant need only establish one of the means of improper conduct by the government—that it was vexatious, *or* frivolous, *or* in bad faith—to be entitled to recover attorney’s fees and costs under the Hyde Amendment. *See United States v. Monson*, F.3d 435, 439 (8th Cir. 2011); *United States v. Braunstein*, 281 F.3d 982, 994, 997 (9th Cir. 2002) (noting the test is disjunctive and holding that defendant was entitled to attorney’s fees based on analysis of the “frivolous” prong).

As the Hyde Amendment is modeled after the EAJA (28 U.S.C. § 2412), courts applying it often rely on the provisions and judicial interpretations of the EAJA to evaluate Hyde Amendment claims. However, unlike the EAJA, a defendant seeking relief under the Hyde Amendment has the burden to prove their claims by a preponderance of the evidence. *United States v. Terzakis*, 854 F.3d 951, 954 (7th Cir. 2017); *United States v. Manchester Farming P’ship*, 315 F.3d 1176, 1182 (9th Cir. 2003); *United States v. Knott*, 256 F.3d 20, 28 (1st Cir. 2001); *United States v. Truesdale*, 211 F.3d 898, 908 (5th Cir. 2000). Presumably because the Defendant bears this burden, the Hyde Amendment allows for discovery to be conducted by the Defendant for good cause shown. *See United States v. Terzakis*, No. 13 CR 339, 2016 U.S. Dist. LEXIS 110553, at *31 (N.D. Ill. Aug. 19, 2016) (recognizing the court has discretion to permit discovery in *Hyde* context for “good cause,” but finding that the

defendant there had not shown “good cause” to obtain it). Additionally, the scope of discovery to support a claim under the Hyde Amendment may be broader than the record before the Court. *United States v. Gardner*, 23 F. Supp. 2d 1283, 1296 (N.D. Okla. 1998) (granting discovery to Hyde Amendment claimant and observing that the law “expressly contemplates an expansion of the record traditionally available to the Court for the purpose of assessing an applicant’s claim.”).

Procedurally, the Hyde Amendment incorporates the standards set forth in 28 U.S.C. § 2142, which requires that a party submit their claim to the court within 30 days of final judgment in the action.⁷ *See* 28 U.S.C. § 2142(d)(1)(B); 18 U.S.C. § 3006A note (“awards shall be granted pursuant to the procedures and limitations provided for an award under section 2142 of title 28, United States Code”).

III. ARGUMENT

A. Defendants are Entitled to Relief Under the Hyde Amendment as the Prevailing Parties.

First, as noted above, absent equitable tolling issues, a defendant seeking an award of fees and expenses under the Hyde Amendment must submit their application within 30 days of final judgment. 28 U.S.C. § 2412(d)(1)(B). Defendants’ claim is timely under any measure, as the Court did not formally dismiss Count One until May 8, 2026 (Dkt. 155). A defendant’s application must also submit an itemized statement stating the “actual time expended and the rate at which fees and other

⁷ The EAJA 28 U.S.C. § 2142(d)(1)(B) time limitation has been found to be subject to equitable tolling. *See Dobyans v. United States*, 101 F.4th 839 (Fed. Cir. 2024); *Townsend v. Comm’r of Soc. Sec.*, 415 F.3d 578, 582 (6th Cir. 2005).

expenses were computer.” 28 U.S.C. § 2412(d)(1)(B). Counsel for Defendants will submit to the Court summary billing statements forthwith.

Second, to qualify for relief under the Hyde Amendment a defendant must show that their net worth was less than two million dollars at the time of the indictment. *United States v. Adkinson*, 247 F.3d 1289, 1291 n.2 (11th Cir. 2001); see 28 U.S.C. § 2412(d)(1)(B) (listing, among other requirements, that any “party” seeking an award of fees and expenses must be “an individual whose net worth did not exceed \$2,000,000 at the time the civil action was filed”). Here, each Defendant falls below that threshold, as evidenced by the financial summaries provided in their respective pretrial services reports, which are already of record in this case.⁸ Dkt. 35 (Rabbitt), Dkt. 18 (Abughazaleh), Dkt. 200 (Martin), Dkt. 24 (Straw).

Third, a defendant must show that they are the prevailing party. 28 U.S.C. § 2412(d)(1)(B). Defendants clearly meet that standard following the government’s dismissal with prejudice of the charges in the indictment and superseding information which was prompted by the discovery and outing of serious misconduct by the government in *this case*, as to *these Defendants*. As the Seventh Circuit ruled in *Terzakis*, the defendant was the “prevailing party” for purposes of seeking attorney’s fees under the Hyde Amendment because the dismissal “materially altered” the parties’ relationship since the government “could no longer prosecute [defendant] for the [charged conduct].” 854 F.3d at 954-55; *United States v. Lawrence*,

⁸ Should this threshold be disputed or the Court require further proof on this topic, Defendants are prepared to provide additional information regarding their respective financial net worth at the time of the indictment.

No. 06-10019, 2006 U.S. Dist. LEXIS 52570, at *5 (C.D. Ill. July 31, 2006) (“A threshold inquiry in the application of the Hyde Amendment is whether the petitioner is a ‘prevailing party’ under the statute. ... *Here, it is clear that Lawrence was the prevailing party because all of the claims against him were dismissed with prejudice.*”) (emphasis added).

B. The Prosecution was Vexatious, Frivolous, or Brought in Bad Faith.

Next, Defendants must show that the “government’s case was vexatious, frivolous, or taken in bad faith” to obtain relief under the Hyde Amendment. *Terzakis*, 854 F.3d at 955. In evaluating such, the Court’s focus must be on the prosecutors’ conduct and ask, “whether the alleged prosecutorial misconduct was so ‘pervasive’ as to ‘render the government’s litigating position as a whole vexatious, frivolous, or in bad faith.’” *United States v. Reyes-Romero*, 959 F.3d 80, 96 (3rd Cir. 2020) (internal citations omitted).

The Seventh Circuit has recognized that the terms “vexatious” and “frivolous” “both require a prevailing party to demonstrate that the government’s position was objectively deficient—in other words, that the government lacked a sufficient factual or legal basis on which to initiate or proceed with the case.” *Terzakis*, 854 F.3d at 956. Vexatious prosecution requires both a subjective element of maliciousness or intent to harass, and an objective element of deficiency. *United States v. Sherburne*, 249 F.3d 1121, 1126-27 (9th Cir. 2001). The government’s position is frivolous when it is groundless, with little prospect of success, often brought only to embarrass or annoy

the defendant. *United States v. Gilbert*, 198 F.3d 1293, 1299 (11th Cir.1999). While the Seventh Circuit has not defined the term “bad faith,” other courts have interpreted it to mean more than “simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; ... it contemplates a state of mind affirmatively operating with furtive design or ill will.” *Id.* (quoting Black’s Law Dictionary 139 (6th ed.1990)). Here, Defendants intend to proceed on each of the three independent grounds to support their Hyde Amendment claim – any one of which would be sufficient.

The misconduct in the grand jury, which—as the Court summarized at the May 21, 2026, hearing—included “prosecutorial vouching to the grand jurors, with the AUSA putting her personal credibility and trustworthiness on the line in support of the charges”; “improper prosecutorial communications of a substantive nature with the grand jurors outside of the grand jury room”; the prosecutor “excusing grand jurors who disagreed with the government’s case from the deliberations process”; and, the AUSAs redacting lines and omitting pages of this misconduct to obscure it from the Court (Tr., May 21, 2026, pp. 22-23)—all evidence, at a minimum, of the government’s bad faith in proceeding with the case, and all of which warrant further factual development through discovery and a hearing.⁹

In addition to the shocking misconduct before the grand jury, the considered decision by the government *not* to disclose the misconduct to the parties or the Court,

⁹ Defendants also seek leave to amend or supplement this motion once the facts surrounding the misconduct with the grand jury and/or misleading the Court become further developed.

as well as the active and intentional concealment and attempts to deceive the Court and the Defendants of what transpired before the Grand Jury, further demonstrate the bad faith nature of the prosecution. The actions of the prosecutors in the grand jury demonstrate the lack of a sound basis for the indictment in the first place—most certainly on the conspiracy charge—which appears to have inspired disregard for the blackletter rules of conduct before a grand jury. As the Ninth Circuit stated in *Braunstein* in discussing why “the Hyde Amendment’s legislative history and out-of-circuit authority will be considered to provide helpful guidance in deciphering the meaning of ‘frivolous’”:

United States Representative Henry Hyde, who wrote the original version of the Amendment, explained that successful claimants under the Hyde Amendment must show that the prosecutors “are not just wrong, they are willfully wrong, they are frivolously wrong. ***They keep information from you that the law says they must disclose. They hide information. They do not disclose exculpatory information to which you are entitled.***” 143 Cong. Rec. H7786-04, HH7791 (Sept. 24, 1997) (statement of Rep. Henry Hyde).

Braunstein, 281 F.3d at 994-95 (emphasis added). This is precisely the type of conduct at issue here.

Finally, in examining the decisions made by the U.S. Attorney’s Office to redact the portions of these transcripts it provided to the Court—now with the benefit of having the full unredacted transcripts—it becomes even more clear how intentional their actions were. There were no mistakes or momentary lapses of judgment in the decision to make these redactions and hide patently relevant and material evidence from the Court. *United States v. Bowman*, 380 F.3d 387, 391 (8th Cir. 2004) (“the

Hyde Amendment targets prosecutorial misconduct rather than prosecutorial mistake”). Instead, these actions evince a premeditated coverup to prevent this misconduct from ever coming to light. The coverup was carried out over weeks and months of time, including in written briefs and in-person hearings before this Court. (See “Timeline” above). The responsible parties must be held accountable, and not merely by conveniently pointing to a single prosecutor when the circle of complicity in the misconduct is clearly larger.

As the Court soberly observed in the hearing held prior to the government’s decision to dismiss the remaining charges in the superseding information on May 21, 2026, the government’s misconduct here has broken the presumption of regularity and breached the Court’s trust. Tr. 5/21/26, p. 23. Further, while the government dismissed Count One with prejudice, purportedly after the U.S. Attorney first became aware of the vouching in late April 2026—***and despite the fact that the second grand jury presentation on October 16, 2026, was shut down because of apparent misconduct that rose “in realtime” to the front office***—it is still unclear what exact steps, if any, the U.S. Attorney undertook to inquire whether there was any additional misconduct before the grand jury like that which the Court exposed on May 21, 2026. Moreover, the misconduct that was so serious as to justify the dismissal of Count One cannot be divorced from the proceedings on the misdemeanor § 111 counts that were also presented to the same grand jury. With the information that finally came to light on May 21, 2026, it now appears that the swapping of the superseding information for the same misdemeanor count in the

indictment appears to have been a deliberate and willful attempt to keep the grand jury transcripts—and the severe misconduct they reveal—from the Court, the defense, and the public.¹⁰

In addition to these compelling reasons that ultimately forced the government to dismiss all charges with prejudice, defense counsels' initial review of the unredacted grand jury transcripts has revealed other prosecutorial statements concerning the alleged "offense conduct" that were, at best, made in reckless disregard of the truth and video evidence (if not outright false) that would further support Defendants' claims as to the vexatious and frivolous nature of this prosecution. Suffice it to say for now, the government's own admissions and conduct, as well as the Court's observations, including the Court's comments regarding Defendants' entitlement to briefing and a potential hearing on the issue of vindictive prosecution, provide ample grounds for the filing of this Motion based on the bad faith, vexatious, and/or frivolous nature of the case.

¹⁰ Setting aside the fact that there was another prosecutor in the room, it is inconceivable that the presentation of such high-profile charges would be done in such an atomized and isolated manner that *no one else* in the U.S. Attorney's office would be aware of what was happening here. To believe that the front office was in the dark is even more unbelievable in light of the "no bill" that was returned after the first presentation to the Grand Jury, as there would have presumably been concerns discussed that grand jurors in this District refused to return indictments stemming from Operation Midway Blitz. And Defendants have always suspected, based on public statements by Administration officials, that there was pressure, if not direction, from Washington D.C. to return an indictment in this case.

C. Defendants Should be Afforded Time to Further Develop their Claims Based on the Recent Disclosures of Admitted Government Misconduct.

In light of the pending and anticipated issues regarding additional disclosures and discovery that could strengthen Defendant's arguments as to the impropriety of the government's prosecution, as well as potential sanctions proceedings that would run on a parallel track with this Hyde Amendment Motion, Defendants respectfully request that the Court hold this Motion in abeyance for the time being, and provide Defendants with time to amend this motion after further review of currently produced materials, litigating their right to access material that is subject to preservation but not yet produced to defendants, and our request to conduct targeted discovery which is forthcoming.¹¹ As noted above, cases interpreting the Hyde Amendment have held that defendants can obtain discovery and introduce additional evidence to support their claim, including at an evidentiary hearing, for good cause shown, and Defendants intend to pursue that avenue here. *See Terzakis*, No. 13 CR 339, 2016 U.S. Dist. LEXIS 110553, at *31 (N.D. Ill. Aug. 19, 2016) (recognizing discovery is permitted in *Hyde* context). Importantly, *the scope of discovery to support a claim under the Hyde Amendment may be broader than the record before the Court. Gardner*, 23 F. Supp. 2d at 1296 (granting discovery to Hyde Amendment claimant and observing that the

¹¹ The Defendants understand that materials are being preserved pursuant to the government's agreement as articulated in Court on May 26, 2026; statutory document retention requirements; litigation hold instructions; and, as the Court noted, the provisions of 18 U.S.C. §1519, which prohibits the destruction of documents to impede or obstruct an investigation, subject to criminal penalty.

law “expressly contemplates an expansion of the record traditionally available to the Court for the purpose of assessing an applicant’s claim.”) (emphasis added).

The Ninth Circuit has held that the relation-back doctrine applies to permit “prevailing party” defendants to amend timely-filed motions for attorney’s fees under the Hyde Amendment, so long as the initial motion is filed within the 30-day window. *United States v. Hristov*, 396 F.3d 1044, 1045 (9th Cir. 2005). Here, potential discovery issues are still live and developing matters before the Court. While Defendants believe the Hyde Amendment entitles them to discovery on the matters at issue, including access to documents and other evidence that is subject to the government’s preservation obligations set forth before the Court on May 26, 2026, Defendants, who are evaluating their arguments in the wake of the May 21, 2026, dismissal with prejudice, will separately file a motion seeking discovery to further bolster their legitimate, well-grounded claims under the Hyde Amendment as summarized briefly herein and is apparent in the record now before the Court.

Accordingly, rather than set a briefing schedule on this initial motion, counsel respectfully request that Defendants be permitted to engage in certain targeted discovery that will be outlined in a forthcoming motion, and then to file an amended or supplemented motion after further discovery on these issues.

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully move for an award of their attorneys' fees and litigation expenses under the Hyde Amendment; ask the Court to hold this motion in abeyance pending the conduct of discovery on the issues related to Defendants' Hyde Amendment claims that will further inform this motion and the relief sought herein; and any other relief the Court deems just and proper under the circumstances presented.

Respectfully submitted,

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EXHIBIT A

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December 3, 2025

By Email

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Re: *United States v. Rabbitt, et al.* Case No. 25 CR 693 (N.D. Ill.)

Counsel,

This letter is written on behalf of our client, Andre Martin, as well as all the Co-Defendants in the above case who join in the requests set forth below.

Pursuant to the Government's discovery obligations, we ask that the Government produce the following to the Defendants within 30 days of receipt of this letter:

Video and Audio:

1. All videos, still pictures, and/or audio recordings in the possession, custody or control of the Government of the area surrounding the Broadview federal facility located at 1930 Beach Street, Broadview, Illinois (the "federal facility"), specifically the area bounded by Lexington on the North, 24th Avenue on the East, Fillmore on the South, and the train tracks on the West, and specifically including the area where the events described in the indictment occurred, for the period September 19, 2025 through October 1, 2025.
2. Any and all body-worn or car-born (dash-cam) camera footage, including any audio, taken/recorded on September 26, 2025 from

any law enforcement agent or entity that was at or near the scene of the event(s) described in the indictment – that is, the area surrounding the Broadview federal facility located at 1930 Beach Street, Broadview, Illinois, specifically the area bounded by Lexington on the North, 24th Avenue on the East, Fillmore on the South, and the train tracks on the West, and specifically including the area where the events described in the indictment occurred – and/or relating to any law enforcement agent’s or entity’s conduct pertaining to the event(s) described in the indictment.

3. All video from the Broadview Tower for the period September 19, 2025 through October 1, 2025. (A portion of such video was produced by the Government at MEDIA 005.)
4. All aerial footage, including any audio, from drones or other aerial devices of the area around the federal facility, including but not limited to the scene of the event(s) described in the indictment, for the period from 5:00 a.m. to 1:00 p.m. September 26, 2025.

The Federal Vehicle Involved:

5. All pictures and videos of the federal vehicle alleged to be damaged by Defendants during the incident on September 26, 2025 (the “federal vehicle”), which pictures or videos were taken prior to 7:45 a.m. on September 26, 2025.
6. All records (written, video, photographic, or otherwise) of any and all damage, scratches, dents, scrapes, marks, accidents and/or repairs to the exterior of the federal vehicle prior to 7:45 a.m. on September 26, 2025.
7. All maintenance records for the federal vehicle for the period January 1, 2024 through the present.
8. All records (written, video, photographic, or otherwise) establishing that any of the damage, scratches, dents, scrapes, or marks on the

federal vehicle were not on the federal vehicle prior to 7:45 a.m. on September 26, 2025.

Grand Jury Transcripts:

9. All grand jury transcripts and minutes, including but not limited to instructions given to the grand jurors on the law.
10. All exhibits shown to the grand jurors.

Internal Communications/Orders/Directions to Law Enforcement:

11. All orders, directives, commands, memoranda, and/or communications to, from, among, or with representatives or agents of ICE, Border Patrol, the DOJ, Broadview Police, or any other federal or local law enforcement person(s) or entities relating to law enforcement activity, policies, procedures, tactics, permitted responses, use of force, or other conduct relating to protests and/or protester activity at or near the scene of the incident described in the indictment (the area outside the federal facility located at 1930 Beach Street, Broadview, Illinois) for the period August 1, 2025 through September 26, 2025.
12. For the period April 1, 2025 through the present, all orders, directives, commands, memoranda, and/or communications to, from, among, or with representatives or agents of ICE, Border Patrol, the DOJ, the Executive Branch, Broadview Police, or any other federal or local law enforcement person(s) or entities relating to the First Amendment of the U.S. Constitution and protest activities at, or in the vicinity of, federal detention facilities that have been, or are being, used to hold or house detainees (even temporarily) who are alleged or suspected of being undocumented immigrants or persons believed or suspected to be subject to deportation by the U.S. government.

13. All communications, whether written, oral, or electronic, to or from the federal agent in the federal vehicle on September 25 through October 1, 2025 which relate in any way to the events described in the indictment and/or his version or description of the event(s) described in the indictment.

The Identity of, and Internal Records Relating to, the Federal Agent(s) In the Federal Vehicle:

14. The identity of the federal Agent (and any other person(s)) who were in the federal vehicle described in the indictment during the incident described in the indictment.¹

15. All records alleging or relating to any allegations, claims, inquiries, investigations, and/or findings about misconduct by the federal Agent who is alleged to have been driving the federal vehicle through the group of protesters during the incident described in the indictment (the area outside the federal facility located at 1930 Beach Street, Broadview, Illinois). This request includes, but is not limited to, failure to comply with any order, directive, approved tactic, use of force, policy, or procedure relating to interacting with any citizen or protestor.

Documents/Information Relating to the Conspiracy Charge:

16. Documents or information (in whatever form) pertaining to:

- a. Defendants' (or any individual Defendant's) membership in the charged conspiracy;
- b. Defendants' (or any individual Defendant's) communications with any other member(s) of the alleged conspiracy. This

¹ Defendants will agree to have the identifying information about the Agent involved in this case be "attorney eyes only", meaning it would only be shared with the Defendants' attorneys and the attorneys' agents, investigators, experts, or others involved in the defense of the case acting under the direction of a Defendant's attorney.

includes but is not limited to any communications that are part of the formation of the alleged conspiracy and/or communications related to any acts in furtherance of the alleged conspiracy;

c. Any act(s) done in furtherance of the alleged conspiracy.

17. The identities of all alleged uncharged co-conspirators known to the Government.

Defendants respectfully ask that the Government respond promptly as to whether it intends to provide the specific items requested in this letter so we may determine whether a motion will be required. Thank you in advance for your attention to this.

Very truly yours,

A handwritten signature in black ink, appearing to read 'THC', written over a horizontal line.

Terence H. Campbell

THC/mot

cc: Defendants' counsel

EXHIBIT B



U.S. Department of Justice

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Northern District of Illinois*

*Sheri Mecklenburg
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December 18, 2025

Counsel of Record

Re: ***United States v. Rabbitt, et. al., No. 25 CR 693***

Dear Counsel:

This letter is in response to Mr. Campbell's letter dated December 3, 2025, written on behalf of all defendants, setting forth discovery requests. At the outset, I reiterate that Mr. Skiba and I intend to comply with our discovery obligations under Rule 16, *Brady*, *Giglio* and *Jencks*, and you have no basis to assume otherwise. We produced discovery early and have informed you that we will have additional discovery in January. We told you that we are seeking and intending to produce videos in the possession of the Broadview Police Department. We preserved the car for inspection and invited you, without a request, to examine the car, which we arranged even before our first appearance before Judge Perry. However, to the extent that your requests go beyond our obligations, we decline such production. Your letter reads like a discovery request under Federal Rule of Civil Procedure 34, in a civil case in which the fault and liability of the victim is at issue. In this criminal case, blaming the victim is not a legitimate defense to whether the defendants committed the criminal conduct. *Cf. Beul v. ASSE Int'l, Inc.*, 233 F.3d 441, 451 (7th Cir. 2000) ("Victim fault is not a defense, either partial or complete, to criminal liability.").

We address each request specifically below:

Request No. 1: This request is far beyond our obligations and far beyond the scope of this case. Your request for all video for a period beginning a week prior to the charged conduct and continuing for a week after the incident seeks information that is not material to your defense and is beyond Federal Rule of Criminal Procedure 16. Your request is not tied to the charged conduct or the defendants. The FBI agent, Mr. Skiba and I went this week to Broadview to review all video in their possession which might be material and tagged the video showing the incident and any video that morning showing any of the defendants. The agent is on leave starting tomorrow, but when he returns he will pick up the tagged video and we will include it in the January production subject to an appropriate protective order. I had not asked for a protective order for the public videos that we gathered, but I will send you a proposed order to cover the nonpublic videos that we anticipate producing.

Request No. 2: See response to Request No. 1 regarding planned production of all material body-worn and in-car camera footage from the Broadview Police Department. We are not aware of any other law enforcement entity that has additional video, but if you are, please let us know and we will do our best to obtain it.

In keeping with your own reciprocal discovery obligations under Rule 16(b)(1)(A), we remind you to produce to us all video and photos of the incident or the period of September 26, 2025 preceding or following the incident, in your possession if you plan to use it at trial, including for cross-examination.

Request No. 3: We previously produced the video from the Broadview tower of the incident that led to the charges. To the extent that you seek tower video from September 19, 2025 through October 1, 2025, your request is overly broad, immaterial and exceeds our obligations.

Request No. 4: We will investigate whether any drone or other aerial footage exists of the period of time from 7:00 am to 9:30 am, which includes a period both before and after the charged incident is over. To the extent your request seeks video for a longer period of time, it is overly broad, immaterial and exceeds our obligations.

Request No. 5: We have produced all photos of the damage to Agent A's car arising out of the charged incident. We have produced the car itself for your examination on December 3, 2025. In keeping with your reciprocal discovery obligations under Rule 16(b)(1)(B), we request that you produce all photos and video of the vehicle that you have in your possession that you intend to use at trial or if you intend to call your investigator or expert who took such photos or videos as a witness at trial, even if you do not plan to introduce all such photos and videos. When I initially asked for this, you all objected immediately. Upon further discussion with you [Mr. Campbell], you explained that you considered the photos to be work-product privilege that would reveal your thought processes. We do not find that objection credible. We were present when you took the photos, and the photos and video depict the car that we produced for examination. It also stretches credulity to think that we will be able to read your minds and determine your strategy simply from photos and video of the car. Moreover, as set forth above, Rule 16(b)(1)(B) requires this production.

Further, pursuant to Federal Rule of Criminal Procedure 16(b)(1)(C), we request a copy of the results or reports of any physical or mental examination and of any scientific test or experiment, including examination of the car, if you intend to call at trial the witness who prepared such a report.

Request No. 6: We will determine if any such records of the car's outer condition prior to the incident exist, and if so, we will produce.

Request No. 7: We do not believe that “maintenance records” are material to any defense, in that the incident is not related to “maintenance” such as oil changes or other vehicle maintenance. We believe that Request No. 6 covers the potentially material records. If you want to narrow Request No. 7 to potentially material records, please call to discuss further.

Request No. 8: To the extent that this request seeks records which may be material to the defense, it is covered by Request No. 6.

Request Nos. 9 and 10: Regarding your request for grand jury transcripts and minutes, including instructions on the law given and exhibits shown to the grand jurors, we refer you to Rule 6(e)(2)(B). As you know, disclosure of “all grand jury transcripts and minutes, including but not limited to instructions given to grand jurors on the law” and “all exhibits shown to the grand jurors” is generally not permissible. Where disclosure is not expressly permitted by Rule 6(e)(2)(B), disclosure of grand jury materials is not permitted except in exceptional circumstances. See *Carlson v. United States*, 837 F.3d 753, 766 (7th Cir. 2016) (surveying caselaw); *United States v. Corbitt*, 879 F.2d 224, 239 n.18 (7th Cir. 1989) (“[I]t is clear that disclosure of grand jury materials in situations not governed by Rule 6(e) should be an uncommon occurrence.”).

This is a relatively simple, straightforward indictment, that presents no exceptional circumstances, and you have not cited any in your letter or in any discussions with us. Since the case was filed, various defense counsel has stated repeatedly only that they are “interested” in how we presented this case to the grand jury. Your curiosity is not an “exceptional circumstance.” You all know the law, or can research the law, and have no reason to believe that we presented anything other than the law. If you have any basis to argue otherwise, please let me know.

That said, we will produce the grand jury transcript of any witness whom we call at trial, in a timely manner. Although such Jencks material is not due until we turn over such witness for cross-examination, 18 U.S.C. § 3500(a), our initial discovery letter sets forth a schedule for production in advance of any trial, which is above and beyond our obligations.

Request Nos. 11 and 12: These requests for all orders, directives, commands, memoranda and/or communications in ICE, CPB, DOJ, Broadview Police or any other law enforcement agency are inappropriate, immaterial and overly broad in scope and time. This is not a policy case. This is not a civil Section 1983 case. These requests indicate that you intend to try this case on broader immigration policy, which is impermissible and not material to the issue to be determined at trial — i.e., whether your clients hindered and impeded a law enforcement officer in violation of the laws

charged. Your attempts to make any trial about immigration policy are simply an impermissible appeal to emotions and jury nullification.

Request No. 13: See my letter responding to your December 11, 2025 letter, in which I confirmed my agreement to preserve all texts and phone records from September 26, 2025 through December 4, 2025. If any are appropriate for production, we will produce subject to an appropriate protective order.

Request No. 14: Subject to a Protective Order incorporating the terms you proposed, we intend to disclose Agent A's identity if we intend to call him as a witness at trial.

Request No. 15: This request for the agent's disciplinary history is not material or permissible. This is not a Section 1983 case against the agent. This request is an attempt to develop information for blaming the victim, which as noted above, is immaterial to a criminal case. *Beul*, 233 F.3d at 451 To the extent that we call the agent as a witness, we will produce any *Giglio* information, if it exists, in accordance with the schedule set forth in our initial discovery letter.

Request No. 16: We refer you to the discovery produced and to be produced. The nature of this request resembles a civil discovery request; we are unaware of any criminal rule that requires us to create and produce in discovery a list of our evidence for each element of the offense. If you are aware of such an obligation, please let us know.

Request No. 17: We decline to identify any uncharged individuals. Indeed, Department of Justice policies generally preclude us from identifying uncharged individuals except in a limited number of circumstances. *See generally* Department of Justice, Justice Manual, Section 9-27.760 - Limitation on Identifying Uncharged Parties Publicly Moreover, you have more knowledge of this information than we do, given that your clients likely can identify many of the individuals in the video, including those wearing face coverings. Please note that in our press release, we asked for tips on the identity of others involved in the incident. If your clients would like to identify any such individuals, we would extend proffer protection to that information.

In addition, in keeping with your reciprocal discovery obligations and your trial obligations, for any injury of a defendant purportedly resulting from the incident that you intend to refer to at trial in any manner, we request any medical records related to, and photos of, such injuries.

Finally, we point to the Court Order entered on December 18, 2025, allowing early return of trial subpoenas and requiring that copies be provided to opposing counsel within 24 hours of issuance. We also request a copy of any trial subpoena

return. Given the overbreadth of the discovery requests set forth in your December 11 letter to us, we are concerned that your trial subpoenas will be overbroad and that we will have to litigate each subpoena. To avoid this, we ask that you limit your subpoenas to request only documents material and relevant to the issue, i.e., whether your clients committed the charged conduct, as permitted under the Federal Rules of Criminal Procedure and caselaw.

Please note that nothing in this letter is intended to limit your reciprocal discovery obligations required under Rule 16. Our references to your reciprocal discovery obligations are meant only as reminders, but the parameters of Rule 16 govern.

Please let us know if you have any questions or would like to add information as invited by this letter.

Very truly yours,

ANDREW S. BOUTROS
United States Attorney

By: /s/ Sheri Mecklenburg
Sheri Mecklenburg
Assistant United States Attorney

Cc: Matt Skiba

EXHIBIT C



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January 21, 2026

Counsel of Record

By email

Re: *United States v. Rabbitt, et. al.*, No. 25 CR 693

Dear Counsel:

We have received discovery letters from you dated December 1, 2025, December 3, 2025, December 11, 2025 and January 9, 2026. We previously responded to your letters dated December 3, 2025 and December 11, 2025. This letter responds to your letters dated December 1, 2025 and January 9, 2026 seeking discovery for a claim of selective prosecution, and also addresses Mr. Campbell's request that we preserve all documents requested in your letters of December 3, 2025 and December 11, 2025, notwithstanding our legitimate objections to those document requests as set forth in our responses.

At the outset, we reiterate our strong commitment to fulfilling our discovery obligations, and believe that we have gone, and continue to go, above and beyond those obligations. Despite our efforts to go above and beyond our discovery obligations, you have sent us four letters seeking a broad array of documents, mostly mirroring civil discovery requests that are outside the parameters of our discovery obligations, and mostly appearing to be impermissible fishing expeditions. We spent considerable time carefully considering and responding to those requests in a thoughtful and respectful manner. Yet, to date, you have not complied with any of your reciprocal discovery obligations, and on the one occasion that we asked specifically for copies of the photos you took of the car, you rejected our requests without explanation. On further inquiry, Mr. Campbell claimed that copies of the photos of the car will reveal your thought processes and therefore are work product, a claim we do not believe has merit. Nevertheless, to avoid extended debate over a point that does not further the case, we limit our request to the photos you intend to

use at trial. Still, we remind you that we expect timely production of all reciprocal discovery, that the rules do not allow trial by ambush, and we will seek to bar your use of any documents at trial that you do not produce to us in a timely manner.

Turning to your December 1, 2026 letter, supplemented by your January 9, 2026 letter, those letters request discovery based on your expressed concern that defendants in the above-captioned case were “selectively targeted for prosecution.”¹ We do not believe that your requests for discovery are appropriate for the following reasons: (1) the documents you seek are internal documents, which are not discoverable; (2) you have not satisfied your burden of overcoming the presumption that we have not violated the equal protection clause; (3) the other offices and agencies from which you seek documents did not participate in the investigation or prosecution of this case, and thus are not part of the prosecution team; and (4) you seek communications which you, yourselves, describe as being in the public record, and thus are equally available to you, meaning we are not obligated to search and produce these publicly available communications for you.

More specifically:

1. The documents you seek are internal documents, which are not discoverable. Your requests encompass internal communications, such as our prosecution memorandum and emails with our chain regarding appropriate charges, appropriate defendants, and potential defenses. You are not entitled to these internal communications. We refer you to Federal Rule of Criminal Procedure 16(a)(2), subtitled “Information Not Subject To Disclosure,” which expressly and specifically precludes disclosure of “internal government documents made by an attorney for the government or other government agent in connection with investigating or prosecuting the case.” *See also United States v. Ramirez*, 2025 WL 3019248, *16 n. 25 (CD Cal.) (explaining that defendants seeking similar internal memoranda must “overcome” Fed. R. Crim. P. 16(a)(2)). The caselaw cited below explains the reasoning precluding such discovery, including the chilling effect that such discovery would have on our office’s ability to carefully and thoroughly vet charges.

2. You have not satisfied the initial threshold required to obtain discovery for a claim of selective prosecution. Discovery requests based on a claim of selective

¹ By this, based on other comments you have made, we assume that you mean defendants were selected for prosecution based on impermissible criteria, specifically the exercise of their constitutional rights or their political affiliation.

prosecution were addressed by the Supreme Court in *United States v. Armstrong*, 517 U.S. 456 (1996), cited in your letter. There, the Supreme Court reversed an appellate court decision allowing discovery on a claim of selective prosecution, initially noting that documents requested for a claim of selective prosecution are not permitted under Rule 16. The Court rejected the argument that such documents were “material to the defense,” stating, “we conclude that in the context of Rule 16 ‘the defendant’s defense’ means the defendant’s response to the Government’s case in chief.” *Id.* at 462. The Court then addressed at length why the internal documents were excluded by Rule 16, including a discussion of the above-referenced language of the Rule describing “Information Not Subject To Disclosure.” *Id.* at 462-63. The Court stated, “[w]e hold that Rule 16(a)(1)(C) authorizes defendants to examine Government documents material to the preparation of their defense against the Government’s case in chief, but not to the preparation of selective-prosecution claims.” *Id.* at 463.

The *Armstrong* Court then discussed the standard that applied to obtaining discovery to prove a claim of selective prosecution. The Court stated that it has “taken great pains to explain that the standard is a demanding one.” *Id.* at 463. The Court explained that there is a “background presumption” that the showing necessary to obtain discovery for a claim of selective prosecution “should itself be a significant barrier to the litigation of insubstantial claims.” *Id.* at 464. The Court stated:

A selective-prosecution claim asks a court to exercise judicial power over a “special province” of the Executive. *Heckler v. Chaney*, 470 U.S. 821, 832, 105 S.Ct. 1649, 1656, 84 L.Ed.2d 714 (1985). The Attorney General and United States Attorneys retain “‘broad discretion’” to enforce the Nation’s criminal laws. *Wayte v. United States*, 470 U.S. 598, 607, 105 S.Ct. 1524, 1530–1531, 84 L.Ed.2d 547 (1985) (quoting *United States v. Goodwin*, 457 U.S. 368, 380, n. 11, 102 S.Ct. 2485, 2492, n. 11, 73 L.Ed.2d 74 (1982)). They have this latitude because they are designated by statute as the President’s delegates to help him discharge his constitutional responsibility to “take Care that the Laws be faithfully executed.” U.S. Const., Art. II, § 3; see 28 U.S.C. §§ 516, 547. As a result, “[t]he presumption of regularity supports” their prosecutorial decisions and, “in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties.” *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14–15, 47 S.Ct. 1, 6, 71 L.Ed. 131 (1926). In the ordinary case, “so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file

or bring before a grand jury, generally rests entirely in his discretion.” *Bordenkircher v. Hayes*, 434 U.S. 357, 364, 98 S.Ct. 663, 668, 54 L.Ed.2d 604 (1978).

Id. at 464. Viewing the videos, we do not believe that there is any serious doubt that the USAO has probable cause to believe that the defendants committed the offenses defined in the statutes charged in the indictment.

Of course, the *Armstrong* Court recognized, and we likewise recognize, a prosecutor’s discretion is subject to constitutional restraints. *Id.* at 464. Nevertheless, the Supreme Court held that “[i]n order to dispel the presumption that a prosecutor has not violated equal protection, a criminal defendant must present ‘clear evidence to the contrary.’” *Id.* at 465. To overcome this presumption, you must demonstrate that the federal prosecutorial policy “had a discriminatory effect and that it was motivated by a discriminatory purpose.” *Id.* Here, you have not presented any evidence, much less “clear evidence,” to overcome the presumption. Indeed, courts regularly preclude discovery on that basis. *See United States v. Bass*, 536 U.S. 862, 863-64 (2002); *United States v. Yu*, 161 F.4th 25, 38-43 (1st Cir. 2025); *United States v. Wilson*, 123 F.4th 1021 (9th Cir. 2024) (reversing a grant of discovery based on a claim that the defendants had been selectively prosecuted due to the perception that they held anti-government views); *United States v. Conley*, 5 F.4th 781 (7th Cir. 2021) (applying *Armstrong* standards to preclude discovery on a selective prosecution claim); *United States v. Thorpe*, 471 F.3d 652 (6th Cir. 2006) (reversing the district court order granting discovery on a selective prosecution claim even in the face of defendants’ argument that they could not show discriminatory intent without discovery); *United States v. Hayes*, 236 F.3d 891, 895-96 (7th Cir. 2001) (evidence of media statements and anecdotal statements did not meet the burden required under *Armstrong*); *United States v. Ford*, 2016 WL 4443167 (D. Oregon) (August 22, 2016) (reiterating the rigorous standards governing discovery for a claim of selective prosecution).

Specifically, if you seek such discovery in court, you will have to show that others who were similarly situated were not charged. You cannot show that. The defendants are being criminally prosecuted for their actual conduct depicted in the videos in impeding and hindering a law enforcement agent (and the degree and extent of such conduct), along with a positive identification, enabled by both their not wearing masks (unlike several other individuals at the scene) and admissions of participation in the incident on social media. That is not selective prosecution. *See United States v. Rundo*, 108 F.4th 792, 803–04 (9th Cir. 2024) (holding that the

“strength of the evidence, i.e., how easily a prosecutor can prove that an individual committed a crime . . . is a permissible consideration in making prosecutorial selections”). *See also United States v. Saade*, 652 F.2d 1126, 1136 (1st Cir. 1981) (“The district court also may have considered that the Government, in an effort to husband its limited prosecutorial resources, chose to prosecute only those who could be easily apprehended in the hope that prosecution of the appellants would deter future illegal disruptions of Navy training practice.”).

We note that your December 1 letter specifically seeks communications that refer to “defendants’ alleged conduct and that also refers in any way to defendants who were charged under 18 U.S.C. §111 for their conduct at the U.S. Capitol on January 6, 2021, including any specific references to any political or policy views, or political affiliation or party.” Certainly, you are not pointing to the January 6 defendants as similarly situated but not charged, because the January 6 defendants were, in fact, prosecuted by the Department of Justice. The subsequent pardons of those convicted do not change the fact that DOJ prosecuted the January 6 defendants. *See United States v. McIver*, --- F.Supp.3d ----, 2025 WL 3171286 *15-16 (D. N.J. November 13, 2025). The January 6 defendants are not “similarly situated.” That said, if your clients are willing to proffer the identification of others whom they believe were similarly situated but were not charged due to selective prosecution, we would be happy to receive that information and investigate appropriately.

Your January 9 letter raised additional cases and justifications for discovery on the selective prosecution issue, but still falls far short of satisfying your burden to overcome the presumption established in *Armstrong*. You cite *United States v. Monsoor*, 77 F.3d 1031 (7th Cir. 1996), in which the defendant was convicted of violating a federal statute prohibiting the sale in interstate commerce of fish caught in violation of state natural resources regulation, and in which the Seventh Circuit held that defendant was not entitled to discovery on his claim of vindictive or selective prosecution. Like the defendant there, you have failed to raise evidence that we have acted with improper motive or that an external agency prevailed on us to seek an improper indictment, because neither is true. You also cite *United States v. Koh*, 199 F.3d 632 (2d Cir. 1999), in which the Second Circuit held that defendant was not entitled to discovery on his claim of selective or vindictive prosecution where he did not show that (1) the prosecutor harbored genuine animus toward the defendant, or was prevailed upon to bring the charges by another with animus such that the prosecutor could be considered a “stalking horse,” and (2) he would not have been prosecuted except for the animus. You have not shown any of those circumstances here because they do not exist. Finally, you rely on *United States v. Garcia*, No. 3:25-

cr-00115,[2025 U.S. Dist. LEXIS 213551, at *3, 4 (M.D. Tenn. Oct. 27, 2025), where the court held that the defendant *already overcame the presumption and made a prima facie case of selective prosecution*. There, the government submitted its internal communications to the district court for an *in camera* review, and only after that review did the court order production to the defense. Here, you have not met that burden, nor established any basis whatsoever for the court to conduct an *in camera* review. Moreover, the *Garcia* court noted that it was an unusual case, where the question was “[w]hat prompted a change in the further prosecution of a closed case.” That case is vastly different from this case, where there is no prima facie case made, or to be made.

You also state in your January 9 letter “[White House Chief of Staff] [Susie] Wiles has been quoted [in Vanity Fair] acknowledging that some prosecutions brought by the Trump Administration’s Department of Justice, specifically against certain political figures, could be seen as retributive and vindictive.” Assuming arguendo that Ms. Wiles made such a statement in a magazine interview, that statement does not establish a claim of selective prosecution anywhere, and certainly not in this case. Courts have recognized that statements from political figures, “not particularized to a defendant or her policy positions,” will not justify selective prosecution discovery. *See, e.g., United States v. McIver*, 2025 WL 3171286, *18-19 (D. New Jersey).

3. Further, we take issue with your overly broad definition of the prosecution team in an impermissible attempt to expand the discovery we are obligated to produce (or preserve). “Members of the prosecution team include federal, state, and local law enforcement officers and other government officials *participating in the investigation and prosecution of the criminal case against the defendant*.” U.S. Dep’t of Justice, U.S. Attorney’s Manual 9–5.001(B)(2) (Oct. 1, 2006) (citing *Kyles v. Whitley*, 514 U.S. 419, 437 (1995)). Here, the prosecution team includes the United States Attorney’s Office for the Northern District of Illinois and the FBI Chicago field office. The prosecution team does not include the various government offices and agencies from which you are asking us to collect documents and other information; those offices or agencies did not participate in the investigation and prosecution of this case. This point also goes to your request that we preserve thousands of documents across a multitude of government offices and agencies that are not part of the prosecution team; in addition to the fact that you are not entitled to such documents, you cite no authority for the proposition that we have the authority to require other agencies and offices in government to preserve such documents.

4. Your letter further seeks information that is publicly available. In addition to our objections stated above, we object to your definition of communications to include “statements appearing on any social media, including X, Facebook, Instagram, or any posts or public comments of government officials.” Statements on social media and public posts or public comments of government officials in the public arena are equally available to you. Such communications are not in the government’s possession and control, and we have no duty to search public internet sites for such statements. Where the information requested by the defendants is either publicly available, readily accessible the defendants, or already known by the defendants, there are no valid *Brady* or *Giglio* concerns as to that requested information. See *Morris, supra*, 80 F.3d at 1170 (Seventh Circuit held that the government did not suppress information or have an obligation to turn it over to the defendants because the defendants “knew as much” about the separate agency investigations “as the prosecution team itself did.”). See also *United States v. Stein*, 846 F.3d 1135, 1146–47 (11th Cir. 2017) (“the government is not obliged under *Brady* to furnish a defendant with information which he already has or, with any reasonable diligence, he can obtain himself.”) (citations omitted). *United States v. Indivior Inc., supra*, 2019 WL 7116364, at *5. It appears from your letters that you have gathered a far more extensive database of public comments than we have, and thus we ask that you produce to us any such public comments that you plan to use at trial, sufficiently in advance so that we may assess potential motions in *limine* and not have to delay the trial to address such issues.

In conclusion, your letters of December 1, 2025 and January 9, 2026 seek broad categories of information, communications and documents which contravene well-established law, are akin to civil rather than criminal discovery requests that are outside our obligations, and constitute impermissible fishing attempts. In light of the facts and the caselaw cited in this letter, a motion for discovery based on a claim of selective prosecution in this case borders on frivolous. Thus, although we reserve the right to object to each discovery request individually if it becomes necessary, at this stage we object as a whole based on the facts and law set forth herein.

Sincerely,

Sheri H. Mecklenburg
Matthew Skiba