UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHAEL LEMMON, et al., Plaintiffs, v. DONALD J. TRUMP, et al., Defendants.	Civil Action No. 26-cv-544 (TSC)

NOTICE REGARDING APPLICATION FOR TEMPORARY RESTRAINING ORDER

To clarify Plaintiffs' misunderstanding and avoid any potential for further confusion, Defendants respectfully provide notice of anticipated upcoming activity on and around Memorial Circle on Columbia Island in Washington, DC, which is the subject of Plaintiffs' Motion for Temporary Restraining Order (Dkt. 56). This notice is not Defendants' opposition to that motion, and Defendants intend to file their opposition to that motion within the seven days allotted to respond to a motion for preliminary injunction under LCvR 65.1 (b) if the Court does not deny the motion before then.

This activity consists of long-disclosed Phase 1B archaeological survey work,[1] which is being used to generate information that will assist Defendant National Park Service (NPS) in

[1] The Phase 1B archaeological testing was publicly disclosed in a document that Plaintiffs were aware of and cited in their recent Notice of Supplemental Authority. *Compare* Triumphal Arch – Section 106 Assessment of Effect (Revised), at 38–39 (Aug. 28, 2026), available for download at https://parkplanning.nps.gov/document.cfm?parkID=186&projectID=136973&documentID=153235, *with* Dkt. 54, at 6 & n.1. This testing was also publicly disclosed in the original assessment of effects report, which was published on June 5, 2026. Triumphal Arch at Memorial Circle, Assessment of Effects Report, at 20–23 (June 5, 2026), available for download at

completing the procedural prerequisites previously described in the Declaration of Frank Lands, Deputy Director for Operations, NPS, Dkt. 12-1. This activity is a standard predecisional, information-gathering technique used to plan for potential construction projects and ensure compliance with statutes such as the National Historic Preservation Act. Declaration of Jennifer T. Nersesian, Regional Director for the National Park Service, National Capital Region ¶¶ 6, 11 (Nersesian Decl.). This work is anticipated to start no earlier than September 21, 2026, and the land is expected to be restored by October 31, 2026. *Id.* ¶ 9. This activity will be carried out to satisfy NPS compliance obligations and to inform NPS and the public about the history of Columbia Island. *Id.* ¶ 10. This activity is not construction, or demolition in preparation for construction, of an arch. *Id.* ¶ 11.

As described in the Nersesian Declaration, this work will involve mechanically excavating four test pits under the observation of a professional archaeologist to "observe, document, and record soil stratigraphy, archaeological features, and any artifacts or cultural materials encountered." *Id.* ¶ 7. "Any recovered materials would be processed, cataloged, and curated in accordance with all applicable laws and regulations, NPS procedures, and the approved work plan." *Id.*

Before these activities can be performed, NPS must issue a special use permit after complying with all applicable laws and regulations. *Id.* ¶ 8. Like other special use permits, that permit would contain "standard terms to protect NPS resources." *Id.* "The permittee will be required to restore the area to its pre-testing condition to the satisfaction of the park superintendent.

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https://parkplanning.nps.gov/document.cfm?parkID=186&projectID=136973&documentID=151576 (explaining that initial archaeological assessment "did not include subsurface archeological excavation," and that a "subsurface investigation of Memorial Circle may be necessary to determine the presence or absence of deeply buried resources" in "Phase 1B Geoarcheological Investigations").

This means that the test pits will be reclaimed and any park resources disturbed by the activity, including any disturbed grass, will be restored." *Id.*

Defendants provide this notice (and have alerted Plaintiffs' counsel before doing so) to avoid potential confusion about the nature of the activity that will occur on Columbia Island. None of the foregoing investigatory activities constitutes "construction, or demolition in preparation for construction, of an arch," Dkt. 26, and NPS has not issued a final agency action authorizing construction of an arch, Nersesian Decl. ¶ 12. Should NPS ultimately issue such a decision, Defendants will provide "at least fourteen days' notice to commencement of construction, or demolition in preparation for construction, of an arch on Memorial Circle by filing notice on the public docket in this case." Dkt. 26.

Date: September 4, 2026

Respectfully submitted,

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