IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No. 1:21-cr-00729-RBW
	)	
BRENT JOHN HOLDRIDGE	)	

DEFENDANT'S REPLY TO GOVERNMENT'S OPPOSITION TO MOTION FOR TRANSFER OF VENUE OR EXPANDED EXAMINATION OF PROSPECTIVE JURORS

Defendant Brent John Holdridge has moved the Court to transfer the proceedings to another district or, in the alternative, to allow expanded examination of prospective jurors. ECF No. 36. As for the latter, Mr. Holdridge requested expanded examination of jurors using three devices: (1) a jury questionnaire to be distributed to summoned prospective jurors before trial; (2) parties' presence for any pre-screening questioning of prospective jurors; and (3) individual questioning of jurors by the parties. ECF No. 36. The government filed a response, opposing the transfer of venue and jury questionnaire. ECF No. 38. However, the government's response does not oppose Mr. Holdridge's other two requested devices for expanded examination—the pre-screening questioning and individual questioning by the parties. *See id.* at 31-32. Accordingly, this reply focuses on the two points of disagreement, transfer and questionnaire.

In seeking to rebut Mr. Holdridge's arguments for transfer to another district, the government misapprehends or dismisses them as base worries. But the arguments rest on sound concerns about the daunting difficulty of securing a fair trial

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA UNITED STATES OF AMERICA)) v.) Case No. 1:21-cr-00729-RBW) BRENT JOHN HOLDRIDGE) DEFENDANT'S REPLY TO GOVERNMENT'S OPPOSITION TO MOTION FOR TRANSFER OF VENUE OR EXPANDED EXAMINATION OF PROSPECTIVE JURORS Defendant Brent John Holdridge has moved the Court to transfer the proceedings to another district or, in the alternative, to allow expanded examination of prospective jurors. ECF No. 36. As for the latter, Mr. Holdridge requested expanded examination of jurors using three devices: (1) a jury questionnaire to be distributed to summoned prospective jurors before trial; (2) parties' presence for any pre-screening questioning of prospective jurors; and (3) individual questioning of jurors by the parties. ECF No. 36. The government filed a response, opposing the transfer of venue and jury questionnaire. ECF No. 38. However, the government's response does not oppose Mr. Holdridge's other two requested devices for expanded examination —the pre-screening questioning and individual questioning by the parties. See id. at 31-32. Accordingly, this reply focuses on the two points of disagreement, transfer and questionnaire. In seeking to rebut Mr. Holdridge's arguments for transfer to another district, the government misapprehends or dismisses them as base worries. But the arguments rest on sound concerns about the daunting difficulty of securing a fair trial 1 by an impartial jury in this District given the District's characteristics, the still-fresh events of January 6, 2021 that will frame the trial; and pervasive and inflammatory media coverage of those events. Those concerns have particular force in this case because the jury's chief task likely will be to judge Mr. Holdridge's subjective state of mind, which must be distinguished from the state of mind of other individuals who were present at the Capitol on that day. The government's response also repeatedly emphasizes the effectiveness of voir dire as a check on juror prejudice. See e.g., ECF No. 38 at 3 (Voir dire is the "primary safeguard of the right to an impartial jury"), id. at 31 (The Court should rely on a thorough voir dire to protect the defendant's right to an impartial jury"). Yet it opposes a tool—a jury questionnaire—that, if the case were to remain in this District, would enhance the focus and efficiency of formal voir dire. A written questionnaire would help to identify juror prejudice and conserve time for the parties and the Court itself, and the government offers no reason to disallow it, arguing only that it is unnecessary. See id. at 31-32. I. The government has failed to adequately address the compelling reasons that give rise to a presumption of prejudice in this District. Mr. Holdridge has demonstrated that there is extraordinary local prejudice, preventing him from obtaining a fair and impartial trial in this District. In arguing that Mr. Holdridge's contentions lack merit, the government mischaracterizes several of his arguments. As Mr. Holdridge's motion explains, the government has accused him of trying to prevent the certification of President Biden's electoral college results, where more 2 than 92 percent of the voters in District voted for President Biden. ECF No. 36 at 7. Although political leanings, by themselves, are not reasons to disqualify jurors, this homogeneity heightens the risk of prejudice for Mr. Holdridge and limits the potential that he will be judged by a diverse group of his peers. Id. at 7-8. This risk of prejudice is further exacerbated by the fact that D.C. is one of the smallest federal judicial district, all residents reside less than 10 miles from the Capitol Building, and a significant portion of D.C. residents were personally impacted by the events of January 6. ECF No. 36 at 5-7. Yet, the government's response reduces it to a caricature: a claim that Democratic voters will be hopelessly biased. See ECF No. 38 at 14 ("This Court should not assume that every member of a particular political party is biased simply because this case has a political connection."). Mr. Holdridge asks the Court to consider the presumptive prejudice argument as his motion presents it, not through the government's distorted and flattened telling. The government also makes strained analogies to other politically charged cases to argue that the characteristics of this District does not give rise to a presumption of prejudice. For example, the government relies on United States v. Haldeman, 559 F.2d 31 (D.C. Cir. 1976) (en banc) to argue that jurors' partisan political identifications is not "at all pertinent to venue." ECF No. 38 at 4. But the task for the jurors in Haldeman was materially different from the task for the jurors who will be selected in this case. Haldeman involved the prosecution of multiple defendants accused of participating in the Watergate cover-up, and the jury was required to synthesize several months of testimony to determine what the defendants knew, when they knew, and what they did. See 559 F.2d at 52-59. By contrast, the facts about Mr. Holdridge's conduct are comparatively simple and will likely be largely undisputed, leaving the jurors to primarily focus on his knowledge and intent, which will likely be inferred based on their intuition and their preexisting perception of those who were involved in the January 6 events. The risk of prejudice in Haldeman, where jurors could draw from an exhaustive trial record is not comparable to the risk that Mr. Holdridge faces here. Moreover, the risk of prejudice in this case is not merely hypothetical. In two different poll surveys, over 70 percent of D.C. residents stated that they have made prejudgment about the guilt of all January 6 defendants—a significantly higher percentage than residents in other comparable districts. See ECF No. 36 at 11-12. For example, in one poll survey, 72 percent of respondents in this District said "Guilty" when asked whether they are more likely to find a defendant charged with crimes for activities on January 6 guilty, in contrast, only 37-48 percent of respondents in three other districts (Middle District of Florida—Ocala Division, Eastern District of North Carolina, and Eastern District of Virginia) responded "Guilty." ECF No. 36-1 at 10. In another survey, 71 percent of respondents in this District said "Guilty" when asked for their opinion on whether people arrested for January 6 activities were guilty of the charges brought against them; only 54 percent of respondents from Georgia responded the same. ECF No. 36-2 at 7. 4 The government acknowledges that a significantly higher percentage of D.C. residents have indicated that they have prejudged the guilt of January 6 defendants. ECF No. 38 at 13. Nonetheless, it argues that this evidence does not support a presumption of prejudice because "some percentage of respondents in all surveyed jurisdictions expressed these so-called 'prejudgments.'" Id. at 13-14. This argument is illogical. Given the widespread level of prejudice that exists across the country, the very least a court could do to provide a defendant a fair trial is to remove the trial from a locale where over 70% of the jury pool have concluded guilt to a locale where only 37-54% have so concluded. The government also makes much of the fact that a higher number of D.C. respondents stated that it would be possible for them to be fair and unbiased jurors for a January 6th Defendant than respondents from other locales. ECF No. 38 at 14 (citing ECF No. 36-1 at 23, 26). As noted by the ILR survey's administrator, ""[w]hile promising on its face, this representation may actually indicate a failure to recognize or admit threats to fairness and impartiality" by the DC respondents given that the same panel revealed making prejudicial prejudgments at a

much higher rate and with more intensity than any other test area. ECF No. 36-1 at 5. Indeed, the court in United States v. McVeigh cautioned about this exact problem, explaining that "it is easy for those feeling pride [in the local community] to develop a prejudice," that "[t]he existence of such a prejudice is difficult to prove," and "[i]ndeed it may go unrecognized in those who are affected by it." 918 F. Supp. 1467, 1472 (W.D. Okla. 1996). 5 Finally, the government minimizes the sensational media coverage of the events of January 6, asserting that this case does not involve a "confession or other blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight." ECF No. 38 at 23-24 (citing Skilling v. United States, 561 U.S. 358, 382 (2010)). To the contrary, the media coverage has been highly graphic, emotionally charged, and dramatically staged, as explained in Mr. Holdridge's motion. ECF No. 36 at 9-10. This news also is likely to impact D.C. residents in a more acute and personal way, given that residents this District report a year after the events that they are still reliving trauma and feeling unsafe. ECF No. 36 at 6. In short, the government has not sufficiently addressed the grave threat to Mr. Holdridge's right to a fair trial. For the reasons stated in Mr. Holdridge's motion, prejudice should be presumed and the proceedings transferred to another district where he can receive a fair trial by an impartial jury. II. If the case remains in this District, an expanded examination of jurors would help the parties and the Court identify juror prejudice and select a jury more efficiently. The government's response extols questioning of jurors as an effective tool to determine "whether individual prospective jurors have. . . disqualifying biases." ECF No. 38 at 4. Despite that, the government opposes a jury questionnaire, id. at 31-32, a device that would be deployed under the Court's supervision and would undoubtedly advance and streamline the task of ferreting out prospective jurors' disqualifying biases.1 Mr. Holdridge agrees with the government that voir dire is an essential tool to guard against juror prejudice. But he disagrees with its rigid insistence that all questioning be in person. As the government notes, judges in this District have used written questionnaires to aid in screening potential jurors. ECF No. 38 at 31, n.10. Moreover, a similar request to use a questionnaire has been granted in another January 6 trial. Id. (citing United States v. Alford, 21-cr-263, ECF No. 46 at 15) (D.D.C. Apr. 18, 2022). In granting the request for a questionnaire, Judge Chutkan noted that a January 6 case is in many ways unique. Alford, ECF No. 46 at 14. Unlike most crimes that involve an identifiable victim or victims, the victims of a January 6 defendant's alleged crimes are more nebulous. Id. Moreover, there has been extensive media coverage, and many hold impressions and opinions about the day's events. Id. Judge Chutkan explained that whether those impressions and opinions amount to disqualifying bias or not is a question that deserves careful consideration—one that provides good reason to expand examination of prospective jurors. Id. The same reasoning applies here. Accordingly, if the court does not transfer the trial to another district, Mr. Holdridge respectfully submits it should grant the request for expanded examination 1 Mr. Holdridge has additionally requested that parties be present for any pre- screening questioning of prospective jurors and that the parties be permitted to conduct individual questioning of jurors. The government has not opposed these two requests. 7 of potential jurors in three ways: (1) that defense counsel be permitted to prepare a written jury questionnaire for distribution to prospective jurors; (2) that the parties be permitted to be present for any pre-screening questioning of prospective jurors that the court conducts before the beginning of formal voir dire; and (3) that the parties be permitted to ask follow-up questions of individual jurors during voir dire. Dated: J

than 92 percent of the voters in District voted for President Biden. ECF No. 36 at 7. Although political leanings by themselves are not reasons to disqualify jurors, this homogeneity heightens the risk of prejudice for Mr. Holdridge and limits the potential that he will be judged by a diverse group of his peers. *Id.* at 7-8. This risk of prejudice is further exacerbated by the fact that D.C. is one of the smallest federal judicial districts, all residents reside less than 10 miles from the Capitol Building, and a significant portion of D.C. residents were personally impacted by the events of January 6. ECF No. 36 at 5-7.

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The government also makes strained analogies to other politically charged cases to argue that the characteristics of this District does not give rise to a presumption of prejudice. For example, the government relies on *United States v. Haldeman*, 559 F.2d 31 (D.C. Cir. 1976) (en banc) to argue that jurors' partisan political identifications is not "at all pertinent to venue." ECF No. 38 at 4. But the task for the jurors in *Haldeman* was materially different from the task for the jurors who will be selected in this case. *Haldeman* involved the prosecution of multiple defendants accused of participating in the Watergate cover-up, and the jury was

required to synthesize several months of testimony to determine what the defendants knew, when they knew, and what they did. *See* 559 F.2d at 52-59. By contrast, the facts about Mr. Holdridge's conduct are comparatively simple and will likely be largely undisputed, leaving the jurors to primarily focus on his knowledge and intent, which will likely be inferred based on their intuition and their preexisting perception of those who were involved in the January 6 events. The risk of prejudice in *Haldeman*, where jurors could draw from an exhaustive trial record is not comparable to the risk that Mr. Holdridge faces here.

Moreover, the risk of prejudice in this case is not merely hypothetical. In two different poll surveys, over 70 percent of D.C. residents stated that they have made prejudgment about the guilt of all January 6 defendants—a significantly higher percentage than residents in other comparable districts. *See* ECF No. 36 at 11-12. For example, in one poll survey, 72 percent of respondents in this District said "Guilty" when asked whether they are more likely to find a defendant charged with crimes for activities on January guilty; in contrast, only 37-48 percent of respondents in three other districts (Middle District of Florida—Ocala Division, Eastern District of North Carolina, and Eastern District of Virginia) responded "Guilty." ECF No. 36-1 at 10. In another survey, 71 percent of respondents in this District said "Guilty" when asked for their opinion on whether people arrested for January 6 activities were guilty of the charges brought against them; only 54 percent of respondents from Georgia responded the same. ECF No. 36-2 at 7.

The government acknowledges that a significantly higher percentage of D.C. residents have indicated that they have prejudged the guilt of January 6 defendants. ECF No. 38 at 13. Nonetheless, it argues that this evidence does not support a presumption of prejudice because "some percentage of respondents in *all* surveyed jurisdictions expressed these so-called 'prejudgments.'" *Id.* at 13-14. This argument is illogical. Given the widespread level of prejudice that exists across the country, the very least a court could do to provide a defendant a fair trial is to remove the trial from a locale where over 70% of the jury pool have concluded guilt to a locale where only 37-54% have so concluded.

The government also makes much of the fact that a higher number of D.C. respondents stated that it would be possible for them to be fair and unbiased jurors for a January 6th Defendant than respondents from other locales. ECF No. 38 at 14 (citing ECF No. 36-1 at 23, 26). As noted by the ILR survey's administrator, ""[w]hile promising on its face, this representation may actually indicate a failure to recognize or admit threats to fairness and impartiality" by the DC respondents given that the same panel revealed making prejudicial prejudgments at a much higher rate and with more intensity than any other test area. ECF No. 36-1 at 5. Indeed, the court in *United States v. McVeigh* cautioned about this exact problem, explaining that "it is easy for those feeling pride [in the local community] to develop a prejudice," that "[t]he existence of such a prejudice is difficult to prove," and "[i]ndeed it may go unrecognized in those who are affected by it." 918 F. Supp. 1467, 1472 (W.D. Okla. 1996).

Finally, the government minimizes the sensational media coverage of the events of January 6, asserting that this case does not involve a "confession or other blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight." ECF No. 38 at 23-24 (citing *Skilling v. United States*, 561 U.S. 358, 382 (2010)). To the contrary, the media coverage has been highly graphic, emotionally charged, and dramatically staged, as explained in Mr. Holdridge's motion. ECF No. 36 at 9-10. This news also is likely to impact D.C. residents in a more acute and personal way, given that residents this District report a year after the events that they are still reliving trauma and feeling unsafe. ECF No. 36 at 6.

In short, the government has not sufficiently addressed the grave threat to Mr. Holdridge's right to a fair trial. For the reasons stated in Mr. Holdridge's motion, prejudice should be presumed and the proceedings transferred to another district where he can receive a fair trial by an impartial jury.

II. If the case remains in this District, an expanded examination of jurors would help the parties and the Court identify juror prejudice and select a jury more efficiently.

The government's response extols questioning of jurors as an effective tool to determine "whether individual prospective jurors have . . . disqualifying biases." ECF No. 38 at 4. Despite that, the government opposes a jury questionnaire, *id.* at 31-32, a device that would be deployed under the Court's supervision and would undoubtedly

advance and streamline the task of ferreting out prospective jurors' disqualifying biases.[1]

Mr. Holdridge agrees with the government that voir dire is an essential tool to guard against juror prejudice. But he disagrees with its rigid insistence that all questioning be in person. As the government notes, judges in this District have used written questionnaires to aid in screening potential jurors. ECF No. 38 at 31, n.10. Moreover, a similar request to use a questionnaire has been granted in another January 6 trial. *Id.* (citing *United States v. Alford*, 21-cr-263, ECF No. 46 at 15) (D.D.C. Apr. 18, 2022). In granting the request for a questionnaire, Judge Chutkan noted that a January 6 case is in many ways unique. *Alford*, ECF No. 46 at 14. Unlike most crimes that involve an identifiable victim or victims, the victims of a January 6 defendant's alleged crimes are more nebulous. *Id.* Moreover, there has been extensive media coverage, and many hold impressions and opinions about the day's events. *Id.* Judge Chutkan explained that whether those impressions and opinions amount to disqualifying bias or not is a question that deserves careful consideration—one that provides good reason to expand examination of prospective jurors. *Id.* The same reasoning applies here.

Accordingly, if the court does not transfer the trial to another district, Mr. Holdridge respectfully submits it should grant the request for expanded examination

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[1] Mr. Holdridge has additionally requested that parties be present for any pre-screening questioning of prospective jurors and that the parties be permitted to conduct individual questioning of jurors. The government has not opposed these two requests.

of potential jurors in three ways: (1) that defense counsel be permitted to prepare a written jury questionnaire for distribution to prospective jurors; (2) that the parties be permitted to be present for any pre-screening questioning of prospective jurors that the court conducts before the beginning of formal voir dire; and (3) that the parties be permitted to ask follow-up questions of individual jurors during voir dire.

Dated: July 6, 2022

Respectfully submitted,

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