

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

-v-

CHRISTOPHER WORRELL,

Defendant.

Case No. 21-cr-00292 (RCL)

**DEFENDANT’S REPLY TO GOVERNMENT’S OPPOSITION TO
DEFENDANT’S MOTION FOR TRANSFER**

Defendant, Christopher Worrell, by and through his counsel, tenders this Reply to the Government’s Opposition to Mr. Worrell’s Motion to Transfer Venue. ECF No. 52. The Government primarily relies on *United States v. Haldeman*, to argue that Mr. Worrell’s motion was at the least premature, and that the circumstances are also not so extreme to warrant a change of venue. 559 F.2d 31 (D.C. Cir. 1976).

The Government mischaracterizes the standard by which the Court may grant Mr. Worrell’s motion to transfer venue. While transfer of venue before voir dire is only mandated in the most extreme cases, like *Rideau*, the Court has broad discretion to rule on a transfer of venue motion based “solely on the subjective reaction of the judge who reaches it.” *Haldeman*, 559 F.2d at 62. Mr. Worrell’s case is ripe for immediate transfer as the media, as well as social media has already widely circulated the most important evidence the Government intends to present at trial infringing on his right to an impartial jury in the District of Columbia.

I. The Government is Correct that the Intended Transfer is the Middle District of Florida.

First, as the Government noted, Mr. Worrell lives in, his family resides in, was arrested in, and had his initial appearance in the *Middle* District of Florida not the

Southern District of Florida and that is where Mr. Worrell seeks to have his case transferred. See ECF No. 52 at 19. References to the Southern District of Florida were in error.

However, the Government's contention that the publicity from media such as "Wink News" and "Naples Daily News" is more likely to bias a jury pool in the Middle District of Florida than in the District of Columbia is unrealistic. "Wink News" has a total engagement online of 1.82 million, compared to CNN's 569.74 million or Fox 5 Washington, the most popular local DC affiliate news stations' 2.48 million engagements¹. The population differential alone makes the Middle District of Florida far more likely to find unbiased jurors. There are nearly 10 million people living in the Middle District of Florida compared to the approximately 700,000 people living in the District of the Columbia.

The Government also did not address the fact that the events of January 6 had a profound impact on the residents of the entire District of Columbia. There was a curfew set that night for 6 PM.² Residents of the District were restricted from travel and witnessed a significant military presence in their city during that day.³ Despite what the Government claims about the National Guard leaving the area soon (*see*

¹ <https://www.similarweb.com/website/fox5dc.com/#overview>;
<https://www.similarweb.com/website/cnn.com/#overview>;
<https://www.similarweb.com/website/winknews.com/>

² "Mayor Bowser Orders Citywide Curfew Beginning at 6PM Today." *Mayormb*, 6 Jan. 2021, mayor.dc.gov/release/mayor-bowser-orders-citywide-curfew-beginning-6pm-today.

³ Wamsley, Laurel. "What We Know So Far: A Timeline Of Security Response At The Capitol On Jan. 6." *NPR*, NPR, 15 Jan. 2021, www.npr.org/2021/01/15/956842958/what-we-know-so-far-a-timeline-of-security-at-the-capitol-on-january-6.

ECF No. 52 at 18), there have been increased calls to make this presence permanent.⁴ Coupled with the fact that a third of all DC residents are employed by the federal government⁵ and this event, as characterized by the Government, was an alleged attack on the federal government itself, the DC jury pool is uniquely tainted. Following the events of January 6, residents reported feeling like they were being punished⁶, treated like criminals⁷, like their lives had been disrupted, this will all lead to jury bias against Mr. Worrell. One DC resident stated that there is a “misconception in D.C. that “these types of disruptions don’t have an impact or an effect on individual residents”.⁸ The Government’s Opposition to Mr. Worrell’s Motion has played into that misconception, incorrectly asserting without support that many of DC’s residents were “largely unaffected by the National Guard’s presence.” EC No. 52 at 19.

In contrast, residents of the Middle District of Florida did not receive the disruption to their daily lives that residents of the District of Columbia had. Residents of the Middle District of Florida were not subject to a curfew, they were not

⁴Beynon, Steve. “Task Force Calls for Permanent National Guard Force to Protect DC.” *Military.com*, 8 Mar. 2021, www.military.com/daily-news/2021/03/08/task-force-calls-permanent-national-guard-force-protect-dc.html.

⁵ *District of Columbia*, Urban Institute (2021), <https://www.urban.org/policy-centers/cross-center-initiatives/state-37-and-local-finance-initiative/projects/state-fiscal-briefs/washington-dc> (last visited Mar. 22, 2021).

⁶ *Residents Resistant To Permanent Capitol Security Fence*, NPR (2021), <https://www.npr.org/432021/02/13/967704469/residents-resistant-to-permanent-capitol-security-fence> (last visited Mar. 22, 2021).

⁷ Gathright, Jenny, and Rachel Kurzius. “What It Feels Like To Live Under DC’s State Of Emergency.” *DCist*, WAMU 88.5 - American University Radio, 13 Jan. 2021, dcist.com/story/21/01/13/dc-state-of-emergency-residents/.

⁸ *Id.*

subject to school and road closures, they were not eye-witnesses to the events of January 6. Residents of the Middle District of Florida are far less likely to be federal government workers, to be exposed to the constant media coverage of the January 6 incident, based on population numbers alone, and are significantly more likely to give Mr. Worrell a chance at a fair trial. In contrast, in the District of Columbia, even with *voir dire*, the jury pool is so limited, and the taint so extensive, that transfer of venue now is warranted.

II. Mr. Worrell's Case Involved Highly Inflammatory Evidence and a Modern Political Tinderbox Distinguishable from *Halderman*.

The Government's attempted analogizing of Mr. Worrell's case to that of *Halderman* ignores two key distinguishing factors, the different character of evidence displayed to the public in this case, and the changed political environment in the modern United States of America. *See* 559 F.2d at 62. The Government claims in their Opposition at 17 that the Capitol cases are not more notorious than Watergate, which is a question only time will be able to tell, but certainly the Capitol cases are far more dramatic, graphic, violent, and shocking in imagery, character, and nature than Watergate. Further the presence and availability of cellphones and social media to immediately transmit photo and video evidence of the event only exacerbates the drama in a way that was impossible when the Watergate scandal occurred.

The evidence widely distributed to the DC jury pool in this case is distinguished from the evidence considered in *Halderman* due to both its emotional weight to the jury pool and its character, as comparable to an alleged confession of the defendant. The Court in *Halderman* stated "the overwhelming bulk of the

material submitted, however, consists of straightforward, unemotional factual accounts of events and of the progress of official and unofficial investigations”. *Id.* at 61. Dry factual accounting will not have the inherently prejudicial effect that invalidates the safeguards of *voir dire*. However, the reporting on the Capitol has included sensational scenes full of violence, chaos, and even death.⁹ These stories particularly stories of violence against Capitol Police on January 6 are supercharged with emotion and outrage laying severe incurable prejudice on Mr. Worrell, who stands accused of violently assaulting a police officer.

In *Rideau* the Court found pretrial transfer of venue before *voir dire* was mandated when the jury pool witnessed the defendant confess to the crime before law enforcement officers without a lawyer present. *Rideau v. State of La.*, 373 U.S. 723, 727 (1963). *Halderman* distinguished itself from *Rideau* holding “We have carefully reviewed the “Watergate” articles submitted by appellants, and we find that the pretrial publicity in this case, although massive, was neither as inherently prejudicial nor as unforgettable as the spectacle of Rideau's dramatically staged and broadcast confession.” *Haldeman*, 559 F.2d at 361–62. The pretrial publicity in Mr. Worrell’s

⁹ AP World News “Scenes of Violence at US Capitol Shock World” <https://apnews.com/article/joe-biden-donald-trump-electoral-college-elections-de812995a8c7cbea5c1de56a3d1aa007>

CNN, “US Capitol secured, 4 dead after rioters stormed the halls of Congress to block Biden's win”, <https://www.cnn.com/2021/01/06/politics/us-capitol-lockdown/index.html>

<https://www.cnn.com/2021/01/07/us/capitol-mob-deaths/index.html>

New York Magazine, “Mob of Trump Supporters Seize Capitol in Stunning Attack on Democracy”, <https://nymag.com/intelligencer/2021/01/trump-supporters-storm-u-s-capitol.html>

WUSA9, “Capitol chaos: Pro-Trump rallies turn to insurrection leaving 4 dead” <https://www.wusa9.com/article/news/national/capitol-riots/pro-trump-protesters-capitol-police-face-off-break-barriers/65-769a51a2-bb58-4a55-bec5-e3651159b213>

case is that of a great spectacle like in *Rideau*, including a photograph of Mr. Worrell appearing to discharge pepper spray on Capitol grounds.

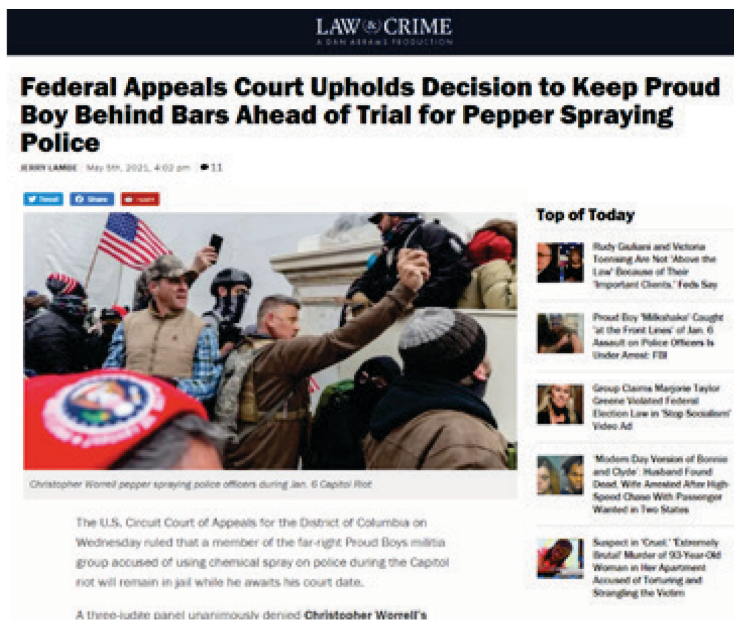
The country and the DC community in particular has been glued to the story of the events of January 6th. CNN recorded its highest ratings ever in the history of its network on the day of January 6.¹⁰ *Halderman* characterized a confession as a "statement against interest is the paradigm" of "facts that strongly implicate an accused." *Halderman citing Nebraska Press Ass'n v. Stuart*, 423 U.S. 1327, 1332-1333, 96 S.Ct. 251, 255, 46 L.Ed.2d 237 (1975) (Blackmun, Circuit Justice). The Government has also acknowledged that photo evidence, including the pictures referenced below, are crucial evidence in this trial. See ECF No. 43 at 3-4; *see also* Criminal Complaint Against Christopher John Worrell. The key evidence in this pending trial has now been allowed to circulate online and in the media, infecting the jury pool with bias against Mr. Worrell.

A picture is worth 1000 words. The Government incorrectly states "it is unlikely that more than a small share of D.C. residents could identify Worrell by name, much less know the particulars of his case, the crimes with which he has been charged, or the evidence against him." ECF No. 52 at 12. Mr. Worrell's picture has been widely broadcast with the flurry of stories about his case. Specifically, the media time and time again use a picture of Mr. Worrell appearing to be at the Capitol grounds discharging pepper spray. One of the articles pictured below even captions

¹⁰ Joyella, Mark. "Attack On Capitol Pushes CNN To Its Most-Watched Day In History." *Forbes*, Forbes Magazine, 8 Jan. 2021, www.forbes.com/sites/markjoyella/2021/01/07/attack-on-capitol-pushes-cnn-to-its-most-watched-day-in-history/?sh=5624c35c3121.

the image “Christopher Worrell pepper spraying police officers”, this picture and captions like it being used are “blatantly prejudicial” of the type described in *Skilling*. 561 U.S. at 382. Where the Government’s only real evidence of Mr. Worrell’s alleged crime is the photographs being spread around online, it is reasonable to believe that many D.C. jurors will see this image and amount it to a confession on the part of Mr. Worrell, rendering Mr. Worrell unjustly prejudiced even before *voir dire* can begin.





Furthermore, the Government has failed to acknowledge the fact that the *Halderman* decision is, as the Government points out, nearly 45 years old, the effect of political bias and the divisive nature of politics have substantially increased since the Nixon era, warranting a presumption of prejudice. Since the early 1970's, the political divide and political divisiveness in the United States have substantially increased.¹¹ The political divide is at its worst since immediately preceding the Civil

¹¹ DeSilver, Drew. "The Polarized Congress of Today Has Its Roots in the 1970s." *Pew Research Center*, Pew Research Center, 30 May 2020, www.pewresearch.org/fact-tank/2014/06/12/polarized-politics-in-congress-began-in-the-1970s-and-has-been-getting-worse-ever-since/.

Paisley, Laura. "Political Polarization at Its Worst since the Civil War." *USC News*, 8 Nov. 2016, news.usc.edu/110124/political-polarization-at-its-worst-since-the-civil-war-2/.

Parker, Kristen. "Democrat/Republican Divide Is Worst It's Ever Been." *MSUToday*, 1 Oct. 2018, msutoday.msu.edu/news/2018/democrat-republican-divide-is-worst-its-ever-been.

Aschwanden, Christie. "Why Hatred and 'Othering' of Political Foes Has Spiked to Extreme Levels." *Scientific American*, Scientific American, 29 Oct. 2020, www.scientificamerican.com/article/why-hatred-and-othering-of-political-foes-has-spiked-to-extreme-levels/.

War.¹² This political divide will have an effect on the protentional jury, regardless of voir dire safeguards. Even the American Bar Association recently published a piece recognizing that political affiliation has an effect on juror verdicts at least in the personal injury context.¹³ Similarly, the *American University Law Review* study “*On the Effectiveness of Voir Dire in Criminal Cases with Prejudicial Pretrial Publicity: An Empirical Study*” noted, “jurors' awareness and willingness to report bias is imperfect.” Kerr, N L, et al., *Am. University Law Review*, vol. 40, no. 2, 1991, pp. 665–701¹⁴. “[E]motional publicity” could also not be cured, not even through time and continuances as the Government has argued. See ECF No. 52 at 15. Moreover, liberals are less aware of their personal biases.¹⁵ This matters in jury selection, where counsel and the Court rely, to a large extent, on juror self-reporting. These studies indicate that Mr. Worrell’s motion is neither premature nor unwarranted. Mr. Worrell is likely to suffer from juror bias in the District of Columbia and for that reason he asks for a transfer to the Middle District of Florida.

The Government confusingly argues that it will not have to engage in any discussions of politics which might influence the jury. See *id.* at 17. It is unclear to

¹² Paisley, Laura. “Political Polarization at Its Worst since the Civil War.” *USC News*, 8 Nov. 2016, news.usc.edu/110124/political-polarization-at-its-worst-since-the-civil-war-2/.

¹³ “Political Affiliation and Jurors' Verdict Orientation in Personal Injury Cases.” *American Bar Association*, www.americanbar.org/groups/litigation/committees/trial-practice/articles/2019/fall2019-political-affiliation-and-jurors-verdicts-personal-injury-cases/.

¹⁴ [https:// www.ojp.gov/library/abstracts/effectiveness-voir-dire-criminal-cases-prejudicial-pretrial-publicity-empirical](https://www.ojp.gov/library/abstracts/effectiveness-voir-dire-criminal-cases-prejudicial-pretrial-publicity-empirical).

¹⁵ *re Liberals Really More Egalitarian*, Psychology Today (2021), <https://www.psychologytoday.com/us/blog/the-63-antisocial-psychologist/202102/are-liberals-really-more-egalitarian> (last visited Mar. 22, 2021); Winegard, Bo, et al, *Equalitarianism: A Source of Liberal Bias*, *supra*.

Mr. Worrell, and counsel, how the Government would intend to explain to a jury the circumstances leading to January 6, the day of January 6, Mr. Worrell's alleged motivations and alleged intents for being there and participating in the "mob" or "riots" on January 6 without engaging in at least some discussion of politics which are necessary to prove the elements of many of the offenses charged, especially those relating to Civil Disorder. These discussions will have a prejudicial effect against Mr. Worrell who is a known Trump supporter in a District that is overwhelmingly comprised of Democrats.

III. Mr. Worrell is One of the Public Faces of the Incident

The Government further argues Mr. Worrell is not prejudiced by the pretrial publicity, as while January 6 has received great media attention Mr. Worrell himself is just another face in the crowd. The Government states "there is no single defendant, or even small group of defendants, who have become the public face of the entire criminal riot." ECF No. 52 at 14. The Government's argument here is plainly incorrect. There are a number of individuals who have become public faces of the Capitol Incident, the QAnon Shaman, Jacob Chansley, or Richard Barnett, the man who infamously propped his feet up on Nancy Pelosi's desk, are obvious examples of public faces of the January 6 incident.

Mr. Worrell, too has become one of the public faces of the Capitol incident via the wide circulation of his photo in the news and online as discussed above. Unlike the Government's cited precedent Mr. Worrell's face is far from unrecognizable to the majority of DC jurors. *See Edmond*, 52 F.3d at 1097. Mr. Worrell has received

constant pretrial publicity both before his arrest and that attention has only exponentially increased since his arrest.¹⁶ He has been given the moniker “Sgt. PepperSprayer” online by twitter users including @SeditionHunters, a Twitter account who collects information on Capitol suspects and transmits the information to the FBI. Mr. Worrell’s contraction of COVID-19, and continued efforts to fight his unjust pretrial detention have further brought on media attention to his case.

Mr. Worrell is a public face of January 6, a dramatic and violent event which is likely to inflame a jury that has already seen Mr. Worrell’s face, knows his name as “Sgt. Pepper Sprayer”, and believes that they already know he has sprayed a Capitol Police officer with pepper spray all without a trial ever taking place. For these reasons, *voir dire* is insufficient, and transfer of venue is warranted now.

IV. The Government Erroneously Implies Mr. Worrell’s Trial Will be at a Distant Point in the Future.

The Government’s Opposition to the Motion to Transfer repeatedly implies that Mr. Worrell’s trial will be at some distant point in the future. *See* ECF No. 52 at 14, 18, 19. The Government states that the military presence in DC is subsided and will be long gone by the time of trial, despite the above calls to make this presence permanent. The Government erroneously bases part of its argument on the belief that any bias created by the media storm around January 6 will be subsided by the time

¹⁶ <https://thehill.com/regulation/court-battles/548633-proud-boy-charged-in-capitol-riot-gets-coronavirus-while-jailed>; <https://www.politico.com/news/2021/04/15/proud-boy-pepper-spray-capitol-riot-482172>; <https://www.wusa9.com/article/news/national/capitol-riots/proud-boy-accused-in-capitol-riot-says-hes-contracted-covid-19-in-jail-christopher-worrell/65-9172495c-c603-4408-b45b-06407b753946>; <https://lawandcrime.com/high-profile/accused-proud-boy-member-and-capitol-rioter-seeks-venue-change-because-d-c-jurors-voted-almost-unanimously-against-donald-trump/>

Mr. Worrell actually goes to trial. Mr. Worrell's trial will not be at some distant point in the future. He has asserted every right to a speedy trial, opposed both the Government's attempts to waive speedy trial under the Speedy Trial Act and will continue to do so, as long as the Government insists on detaining Mr. Worrell pretrial.

The Government's primary reason for believing the trial may be delayed is because of COVID-19, but DC restrictions due to COVID-19 are set to begin lifting this week and are unlikely to cause any substantial delays in trial. The Government has also not so far received any waiver of the Speedy Trial Act, receiving only a four-day waiver. Having been formally arraigned on Friday, May 14, 2021, Mr. Worrell expects to go to trial on Friday July, 23, 2021 pursuant to the Speedy Trial Act. Speedy Trial Act of 1974. 93 P.L. 619, 88 Stat. 2076.

Further, these images and videos of the Capitol, along with the curfews, military presence, road closures, and other inconveniences will not likely be forgotten quickly by the residents of D.C. They were graphic, shocking, and dramatic examples of political divisiveness in America. Especially with a January 6 Commission expected to form in Congress, media coverage will not subside any time soon either.

Mr. Worrell has no reason to believe his trial will be delayed, the Government either has sufficient evidence to bring him to trial or they ought not to have charged him and continue to insist on holding him pretrial. Mr. Worrell asserts every right to a speedy trial and even if there were delays, these short delays would not erode the bias present in the jury pool. Accordingly, Mr. Worrell's case should be transferred to the Middle District of Florida.

V. CONCLUSION

For the forgoing reasons, the Court should reject the arguments presented in the Government's Opposition to Mr. Worrell's Motion to Transfer Venue and transfer Mr. Worrell's trial to the Middle District of Florida where he will be more likely to receive a fair and impartial trial.

_Dated: May 26, 2021

/s/ John M. Pierce

John M. Pierce

355 S. Grand Avenue, 44th Floor

Los Angeles, CA 90071

Tel: (213) 262-9333

jpierce@piercebainbridge.com

*Attorneys for Defendant Christopher
Worrell*

CERTIFICATE OF SERVICE

I hereby certify that, on May 26, 2021, this motion and the accompany declaration was filed via the Court's electronic filing system, which constitutes service upon all counsel of record.

/s/ John M. Pierce

John M. Pierce