

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

PHILLIP SEAN GRILLO,

Defendant.

Case No. 21-690 (RCL)

MOTION FOR TRANSFER OF VENUE

The Defendant, Phillip Sean Grillo, cannot receive a fair trial in the District of Columbia due to presumptive prejudice which prevents the empanelment of an impartial jury. Therefore, through undersigned counsel, and pursuant to Federal Rule of Criminal Procedure 21(a), Mr. Grillo respectfully requests that this Court transfer proceedings to one of the following districts: Northern District of Georgia, Atlanta Division; Middle District of Florida, Ocala Division; Eastern District of North Carolina; or the Eastern District of Virginia. Polling indicates that Mr. Grillo's right to an impartial jury will be secured in one of these jurisdictions. *See* Exhibits 1 & 2.

I. MR. GRILLO CANNOT RECEIVE A FAIR TRIAL IN THE DISTRICT OF COLUMBIA

Mr. Grillo has a constitutional right to a fair trial under the Due Process Clause of the Fifth Amendment and the Sixth Amendment's guarantee of an "impartial jury." Const. amends. V and VI. When prejudice prevents the empaneling of an impartial jury, courts must allow for proceedings to be transferred to a less biased district. *See* Fed. R. Crim. Pro. 21(a) ("the court must transfer the proceeding against th[e] defendant to another district if the court is satisfied that so great a prejudice against the defendant exists in the transferring district that the defendant cannot obtain a fair and impartial trial there.") Put plainly, in some cases, the foreseeable inability of

jurors to remain impartial warrants a *presumption* of prejudice. See *Skilling v. United States*, 561 U.S. 358 (2010). While voir dire is meant to present the opportunity for jurors to show that they can “lay aside [their] impression[s] or opinion[s] and render a verdict based on the evidence presented in court,” there are certain circumstances that warrant a preemptive finding of such prejudice. *Irvin v. Dowd*, 366 U.S. 717, 723 (1961). Presumptive prejudice differs from “actual prejudice” explored through voir dire in that it presents an identifiable threat to due process so great that it cannot be negated by jurors’ responses. *Id.* at 385-95.

In *Skilling*, the Supreme Court laid out three relevant factors in evaluating whether presumptive prejudice should attach and “weigh[] heavily in favor of a change of venue”: (1) the size and characteristics of the venue community; (2) the nature of the media coverage relevant to the case; (3) the time elapsed between the purported crime and the trial.¹ *Skilling*, 561 U.S. at 382-83, 425.

Where it attaches, the Court has further recognized that the presumption of prejudice overrides juror declarations of impartiality during voir dire because such attestations may be insufficient to protect a defendant’s rights in particularly charged cases. *Murphy v. Fla.*, 421 U.S. 794, 802 (1975) (“Even these indicia of impartiality might be disregarded in a case where the general atmosphere in the community or courtroom is sufficiently inflammatory.”); see also *Irvin v. Dowd*, 366 U.S. 717, 728 (1961) (“No doubt each juror was sincere when he said that he would be fair and impartial to petitioner, but psychological impact requiring such a declaration before one’s fellows is often its father.”). Indeed, on appeal of a denial of a motion for change of venue, an appellate court need not even examine the voir dire record if it finds that the presumption attached. *Rideau v. Louisiana*, 373 U.S. 723, 726-27 (1963) (“But we do not hesitate to hold,

¹ A fourth factor is exclusively backward-looking and directs reviewing courts to look to any other evidence of juror prejudice during the trial proceedings. *Skilling*, 561 U.S. at 385-86.

without pausing to examine a particularized transcript of the voir dire examination of the members of the jury, that due process of law in this case required a [transfer].”). Thus, under this precedent, voir dire is simply not a cure for significant and substantiated Due Process concerns about the jury pool.

A. The Small Size and Unique Characteristics of the District of Columbia Makes it Difficult to Select an Impartial Jury.

The foundation for the presumption of prejudice is found in *Rideau*. 373 U.S. at 727. In *Rideau*, the first factor the Court weighed in favor of a finding of prejudice was that about half of the small jury pool had been exposed to prejudicial media reporting about the case. *See id.* Even though voir dire revealed that only three jurors had actually seen the broadcasts at issue, the Court found that the share of the pool that was tainted was significant enough to render the defendant presumptively prejudiced. *See id.*

Because measuring the reach and impact of negative media reporting is difficult, in applying *Rideau* many courts have focused on population size and diversity as a proxy for the share of the population that was likely impacted. For example, in *Skilling* the Court observed that while the number of Enron victims in Houston was higher than that of other crimes, it was far from universal, and because Houston is the fourth-largest city in the United States, and is highly diverse, a significant number of prospective jurors would have had no connection to Enron whatsoever. *Skilling*, 561 U.S. at 358 (“[E]xtensive screening questionnaire and followup [sic] voir dire yielded jurors whose links to Enron were either nonexistent or attenuated.”).

In contrast to Houston, the District of Columbia is one of the smaller major US cities, with a population under 700,000.² And the impact of the events of January 6 on the residents of the

² District of Columbia Population – April 1, 2020, U.S. Census Bureau, <https://www.census.gov/quickfacts/fact/table/washingtoncitydistrictofcolumbia,US>.

District of Columbia were far more widespread than that of Enron in Houston, affecting a far greater share of residents than the conduct at issue in Skilling.

First, as the Court is no doubt aware, a huge proportion of District of Columbia residents either work for the federal government themselves or have friends or family who do. Specifically, as of September 2017, the U.S. Office of Personnel Management reported that there are 600,000 federal civil workers and annuitants in the greater DC area (excluding postal workers, federal bureau of investigation workers, and staff on several federal commissions).³ Nearly 200,000 of those workers and annuitants are within the District itself. *Id.* With a total population of around 690,000, it seems clear that any given member of the District jury pool has a greater likelihood of being closely connected to the federal government than those in comparable metro areas. In fact, as of 2019, according to the DC Policy Center, active federal employment (including postal workers) accounts for nearly a third of all jobs in the District itself. And of course, for each federal worker, there are many friends and family members who are closely connected to the federal government by proxy.

In particular, nearly 15,000 individuals work for Congress directly, and many more residents have friends and family who do.⁴ Another large share are in, or have friends and family in, the many law enforcement groups who took part in responding to January 6.⁵ This means that

³ *Federal Civilian Employment*, OPM (Sept. 2017), <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/federal-civilian-employment/>.

⁴ *Vital Statistics on Congress*, Brookings Institute (July 11, 2013), https://www.brookings.edu/wp-content/uploads/2016/06/Vital-Statistics-Chapter-5-Congressional-Staff-and-Operating-Expenses_UPDATE.pdf.

⁵ As reported in the Human Capital Strategic Plan, as of early 2021, 2,250 individuals were employed by the U.S. Capitol Police Force. *Human Capital Strategic Plan 2021-2025*, U.S. Capitol Police (2020), https://www.uscp.gov/sites/uscapitolpolice.house.gov/files/wysiwyg_uploaded/USCP%20Human%20Capital%20Strategic%20Plan%20for%202021-2025.pdf. 4,400 individuals are employed by the Metropolitan Police Force, and 2,700 individuals are active members of the D.C. National Guard. See *Metropolitan Police Force Annual Report 2020*, DC.gov (2020), https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/AR2020_lowres_a.pdf; see also *About Us*, DC National Guard (2020), <https://dc.ng.mil/About-Us/>. More than 140 officers were

an enormous share of District of Columbia residents have significant and unique connections with individuals or institutions that were affected by January 6. Such connections are not likely to be present in any other comparable district. The government has characterized the events of January 6 – including the attempted obstruction in which the government alleges Mr. Grillo participated – as an attack on our elections, government institutions generally, and democracy as a whole; this suggests that those District residents closely connected to the government are more likely to view themselves as the direct victims of the events.

Second, even District residents who have no direct connection to the government reported feeling deeply traumatized by the events that took place so close to where they live and work. For example, one DC resident shared in an interview that:

I have not been able to digest any of the atrocities that took place last night here in Washington, D.C., you know, literally eight blocks away from my front door[.] I've been having a lot of conversations with people this morning, loved ones. We're all hurting. We're terrified. We're in shock. And I think it's going to take a while. This is by far the darkest moment of my 45-year existence.⁶

Such accounts are typical of those gathered in interviews in the days following January 6, during which the Mayor declared a state of emergency, implemented a city-wide curfew, restricted access to particular roads and bridges, and requested that residents not attend inauguration.⁷ District

allegedly injured from the events of January 6. See Michael Schmidt, *Officers' Injuries, Including Concussions, Show Scope of Violence at Capitol Riot*, N.Y. Times (July 12, 2021), <https://www.nytimes.com/2021/02/11/us/politics/capitol-riot-police-officer-injuries.html>. And while not all individuals employed by these agencies reported to the Capitol on January 6, all 9,350 individuals were directly and adversely affected by the January 6 events in the form of increased presence and overtime demands in the weeks that followed, greatly affecting morale. Indeed, as reported by local media, more than 75 officers left the Capitol Police force in the few months following January 6. *More Than 75 Capitol Police Officers Have Quit Amid Low Morale Since Jan. 6*, The Hill (July 7, 2021), <https://thehill.com/policy/national-security/561832-more-than-75-capitol-police-officers-have-quit-amid-low-morale-since>.

⁶ *D.C. Resident Who Gave BLM Protesters Refuge Condemns 'Atrocities' at U.S. Capitol*, CBC (Jan. 7, 2021), <https://www.cbc.ca/radio/asithappens/as-it-happens-thursday-edition-1.5864816/d-c-resident-who-gave-blm-protesters-refuge-condemns-atrocities-at-u-s-capitol-1.5864894>.

⁷ *Mayor Bowser Orders Citywide Curfew Beginning at 6PM Today*, DC.gov (Jan. 6, 2021), <https://mayor.dc.gov/release/mayor-bowser-orders-citywide-curfew-beginning-6pm-today>; Mayor Bowser

neighborhoods became occupied by the Metropolitan Police and over 25,000 military personnel in the weeks that followed.⁸ Indeed, a local subsidiary of the national public broadcasting network, DCist, reported that:

Residents have rescheduled medical appointments or switched up their bike and run routes to steer clear of downtown D.C. or the Capitol complex. Others say they are avoiding speaking Spanish in public or buying items like baseball bats for personal protection. Some are making plans to leave the city for inauguration. And many have feelings of anger, sadness, and heightened anticipation for the near future. [...] Some residents are also worried that a stepped up military and police presence in the city may only add to their unease.⁹

Moreover, as the Court is no doubt aware, the effects of these events continue to be felt in the District. Indeed, District residents reacted with fear in anticipation of protests planned for September 2021 that were intended to show support for individuals detained in connection with prosecutions arising from the events of January 6. For example, the *New York Times* ran a piece titled “Washington, D.C. On Edge Over January 6 Protests,” and the Associated Press similarly reported “In Edgy Washington, Police Outnumber Jan 6 Protestors,” capturing the District’s overall tenor and response to these ongoing demonstrations.¹⁰

Issues *Mayor’s Order Extending Today’s Public Emergency for 15 Days*, DC.gov (Jan 6, 2021), <https://mayor.dc.gov/release/mayor-bowser-issues-mayor%E2%80%99s-order-extending-today%E2%80%99s-public-emergency-15-days-a1>; Jane Recker, *DC Mayor Says Americans Should Not Come to Washington for the Inauguration*, *Washingtonian* (Jan. 11, 2021) (noting the many street closures), <https://www.washingtonian.com/2021/01/11/dc-mayor-says-americans-should-not-come-to-washington-for-the-inauguration/>.

⁸ Ellen Mitchell, *Army: Up to 25,000 National Guard in DC for Biden Inauguration*, *The Hill* (Jan. 15, 2021), <https://thehill.com/policy/defense/534497-army-up-to-25000-national-guard-in-dc-for-biden-inauguration>.

⁹ Jenny Gathright and Rachel Kurzius, *What It Feels Like to Live Under D.C.’s State of Emergency*, DCist (Jan. 13, 2021), <https://dcist.com/story/21/01/13/dc-state-of-emergency-residents/>.

¹⁰ Associated Press, *In Edgy Washington, Police Outnumber Jan. 6 Protesters*, *US News* (Sept. 18, 2021), <https://www.usnews.com/news/politics/articles/2021-09-18/police-say-theyre-ready-for-rally-supporting-jan-6-rioters>.

Third, an overwhelming number of District of Columbia residents — over 92 percent — voted for President Biden.¹¹ According to the government’s theory of the case, Mr. Grillo and the others charged in connection with January 6 acted to prevent Joseph Biden from becoming President notwithstanding his share of the electoral and popular vote. That is, the government’s theory is that Mr. Grillo and others were seeking to nullify the votes of an overwhelming majority of District residents – in the only national election in which District residents have any say, given their lack of representation in Congress. See, e.g., *Castanon v. United States*, 444 F. Supp. 3d 118, 139 (D.D.C. 2020) (“Article I contemplates that only ‘residents of actual states’ have and may exercise the House franchise”) (citing *Adams v. Clinton*, 90 F. Supp. 2d 35, 47 (D.D.C.), *aff’d sub nom. Alexander v. Mineta*, 531 U.S. 940 (2000)), reconsideration denied, No. CV 18-2545, 2020 WL 5569943 (D.D.C. Sept. 16, 2020), *aff’d*, No. 20-1279, 2021 WL 4507556 (U.S. Oct. 4, 2021).

Finally, the government, the media, and even judges in this division speak of these prosecutions as designed to prevent “another January 6,” and District of Columbia residents know that a repeat of January 6 can only take place in their home.¹² As such, the residents of the District sitting as jurors are highly likely to view Mr. Grillo not only as someone who victimized them, but also as someone who might victimize them again in the future, raising a concern about punishing for propensity.

Given the electoral makeup of the District, it would be impossible to empanel a jury that was not full of people that the government charges were the targets of Mr. Grillo’s alleged offenses. *Cf. Mu’Min v. Virginia*, 500 U.S. 415, 429 (1991) (the population of the greater metro area, including Virginia and Maryland, was large enough to not support an inference of prejudice by

¹¹ *General Election 2020: Certified Results*, DC Board of Elections (Dec. 2, 2020), https://electionresults.dboe.org/election_results/2020-General-Election.

¹² See, e.g., Zachary B. Wolf, *These Republicans Are Worried About Trump's Attempted Coup 2.0*, CNN (Nov. 5, 2021).

media reporting). Thus, though significantly more populous than the pool in *Rideau*, for example, D.C. residents felt the impact of the events of January 6 much more personally and viscerally and in far greater proportion. The events of January left those residents—and therefore the jury pool—neither impartial nor indifferent.

The common sense notion that the events of January 6 had a pervasive prejudicial effect on jury-eligible citizens of D.C. is clearly supported by data. Two juror surveys were conducted to compare the biases held against the January 6 defendants by residents of D.C. versus the residents of other districts, and the results are staggering.

i. The Select Litigation Poll

On behalf of all indigent defendants charged in relation to January 6, the Federal Public Defender for the Eastern District of Virginia retained Select Litigation, LLC, to survey the D.C. jury pool as well as the Atlanta Division of the Northern District of Georgia. *See* Exhibit 1, Select Litigation Jury Survey Report, February 4, 2022. What is apparent from the summary of Select Litigation’s findings, is that the vast majority of jury-eligible citizens of D.C. are so deeply prejudiced against January 6 defendants, that the only way for Mr. Grillo to receive a fair trial is to transfer the trial to a different jurisdiction.

Select Litigation polled 400 potential jurors in the District of Columbia, and the numbers are striking:

- 84% of those polled have unfavorable opinions of those arrested for participating in the January 6 demonstrations;
- 62% would characterize these individuals as criminals;
- 71% have already formed the opinion that these individuals are guilty of the charges brought against them;

- 82% believe “insurrection” is the correct description for the actions of the defendants charged in relation to January 6; and
- 85% have already concluded that those who entered the Capitol had the specific intent to overturn the election.

See Exhibit 1, ¶¶ 9, 10, 14, 15, 16

What the above numbers demonstrate is that D.C. residents have overwhelmingly prejudged January 6 defendants and are predisposed to believing the January 6 defendants are guilty. And, in Mr. Grillo’s case, what is particularly significant is that a large majority of D.C. residents have already made up their minds about an element essential to proving one of the most serious charges against Mr. Grillo.

Under Count One, Mr. Grillo is charged with Obstruction of an Official Proceeding and Aiding and Abetting in violation of U.S.C. § 1512(c)(2). To prove that Mr. Grillo “corruptly” obstructed an official proceeding, the government must prove the defendant acted with a specific wrongful intent. See Indictment, ECF No. 27, Count 1. The findings from the Select Litigation polling demonstrate that an overwhelming majority of jury-eligible D.C. residents have, before hearing any evidence, already reached the conclusion that those who entered the Capitol on January 6 were acting with that specific intent. They concluded that the defendants were:

- Trying to overturn the election and keep Donald Trump in power (85%)
- Insurrectionists (76%); and/or
- Trying to overthrow the United States government (72%).

See Exhibit 1, ¶ 15, 18.

The above numbers establish that a typical *voir dire* will not be sufficient in the instant case to reveal potential jurors deep-rooted biases, as *voir dire* does not usually entail asking jurors

about their thoughts on each element of the offenses charged. And asking jurors to state whether they have reached conclusions that they cannot set aside during the trial will not reveal such prejudice because jurors do not always understand which of their opinions are relevant. *See United States v. Tsarnaev*, 968 F.3d 24, 58 (1st Cir. 2020), *cert granted*, 141 S. Ct. 1683 (2021) (observing that asking potential jurors about whether they had read anything that influenced their opinion or otherwise made them biased in the Boston Marathon bombing case was not likely to reveal bias in part because prospective jurors may be unaware of such bias (quoting *Smith v. Phillips*, 455 U.S. 209, 221-22 (1982)) (internal quotations omitted).

Some of the conflicting numbers in the Select Litigation poll support the concept that jurors are not always aware of their biases and which of their biases are relevant to the case they are deciding. For example, 78% of those who said that they believed the January 6 defendants will receive a fair trial, also believe that the defendants who entered the Capitol were trying to overthrow the government. *See* Exhibit 1, ¶ 16. And 82% who believe the January 6 defendants can receive a fair trial also believe that the term “insurrection” is the correct description for their actions. *Id.*

Furthermore, what is particularly remarkable from the Select Litigation poll is how deeply rooted the prejudice against January 6 defendants is in D.C. residents compared to residents of other districts. Select Litigation surveyed 400 jury-eligible citizens in the Atlanta Division of the Northern District of Georgia, and the findings show that a January 6 defendant is far more likely to receive a fair trial in the Atlanta area, which is demographically similar to Washington D.C., than in D.C. For example:

- While 84% of those polled in D.C. have an unfavorable view of those arrested in relation to January 6, only 54% in the Atlanta Division do;

- 54% of Atlanta division respondents believe that the January 6 defendants are guilty, compared to 71% of D.C. respondents; and
- While more than half of those polled in D.C. said they are more likely to vote “guilty” if on a jury, less than half of the respondents in the Atlanta division responded similarly.

See Exhibit 1, ¶ 23.

What the Select Litigation findings clearly articulate is that Mr. Grillo cannot receive a fair trial in the District of Columbia.

ii. In Lux Research Poll

An additional survey of potential jurors in the District of Columbia, and potential jurors in three other federal judicial districts was conducted by In Lux Research. In Lux Research was retained by counsel for Connie Meggs and Thomas Edwards Caldwell, two defendants charged in relation to the events of January 6, before the Honorable Amit P. Mehta in Case No. 21-CR-028. *See* Exhibit 2, In Lux Research Jury Survey Report. In addition to polling potential jurors in D.C., In Lux Research also polled potential jurors in the: (1) Middle District of Florida – Ocala Division; (2) Eastern District of North Carolina; and (3) Eastern District of Virginia. *See* Exhibit 2, pg. 1, fn 2. Just as with the Select Litigation poll, the results are alarming and make it apparent that a fair and impartial jury cannot be selected in D.C. For example:

- 72% of the D.C. respondents said they are likely to find the January 6 defendants guilty despite being given the choice, “it is too early to decide.” The median in the study among the four districts was 48%;

- 85% of those polled in D.C. characterize the events of January 6th as criminal in nature, even when given options to reserve judgment on that question. The median among the four districts was 54%;
- 40% of the D.C. respondents said they believe **all** the events of January 6th were racially motivated, despite being offered the option to reserve judgment on that question. The median in the study was 20%.

See Exhibit 2, pgs. 2-3.

One area that was explored by the In Lux Research was the personal impact of January 6 on the four districts that were surveyed. The findings reveal that the residents of D.C. were uniquely affected by the events of January 6 and therefore, uniquely prejudiced against the January 6 defendants. According to the report, “In total, 82% of DC Community respondents who answered all of the personal impact and victimization questions reported feeling personally affected, being inconvenienced, having their free movement restricted, feeling increased concern for safety, or identifying with a group they believe was targeted by events at issue in the case(s).” Exhibit 2, pg. 6.

Mr. Grillo cannot receive a fair trial in D.C. The data clearly demonstrates that the overwhelming majority of D.C. residents are so deeply biased against the January 6 defendants, that it will be impossible to select a fair and impartial jury.

B. Media Coverage and the House Select Committee Hearings on the Events of January 6 Have Incurably Tainted the District’s Jury Pool.

In addition to the already deeply rooted prejudice that D.C. residents have against January 6 defendants, the singularity of the media coverage of January 6 and the extended, public investigation make it near impossible to empanel a jury without presumed prejudice in D.C. The Supreme Court noted in *Skilling* that presumed prejudice could result from media coverage which

“readers or viewers could not reasonably be expected to shut from sight.” 561 U.S. at 382. Of course, prospective jurors do not live in a box, devoid of media exposure. But when pretrial publicity has “inflamed passions in the host community” and “permeat[es] the trial setting ... [such] that a defendant cannot possibly receive an impartial trial,” the district court must presume local prejudice and transfer the proceeding. *United States v. Quiles-Olivo*, 684 F.3d 177, 182 (1st Cir. 2012). The Supreme Court affirmed this view in *United States v. Murphy*, citing to cases in which there was ultimately a finding of presumptive prejudice because “the news media, either in the community at large or in the courtroom itself, pervaded the proceedings.” 421 U.S. 794, 799 (1975).

The publicity surrounding January 6 has been particularly pervasive and negative in D.C., creating a disparate prejudicial effect in comparison to other venues. Media following the events of January 6 focused on inflammatory images of officers and bystanders in states of distress. In *Skilling*, the Court rejected the defendant’s argument regarding extensive media coverage in part by noting that the hundreds of articles cited were “largely objective and unemotional.” 561 U.S. at 382. Those terms do not apply to the local publicity around January 6. The language is far from neutral in the vast majority of media reports. Defendants are characterized as “insurrectionists,” “rioters,” “seditionists,” “domestic terrorists,” “white supremacists,” and “criminals.” President Biden himself described those involved in the events of January 6 as “a group of thugs, insurrectionists, political extremists, and white supremacists.”¹³

The coverage of January 6 has been broadcast and discussed on a national level, but the impact on the local population cannot be overstated. Similar to the effects of 9/11 on New Yorkers,

¹³ *Remarks by President Biden at Signing of an Executive Order on Racial Equity*, The White House (2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/01/26/remarks-by-president-biden-at-signing-of-an-executive-order-on-racial-equity/>.

the events of January 6 are considered once-in-a-lifetime for residents of D.C. Vice President Kamala Harris stated, after directly comparing January 6 to September 11, that “[c]ertain dates echo throughout history, including dates that instantly remind all who have lived through them where they were and what they were doing when our democracy came under assault.”¹⁴ Even a year later, local residents describe feelings of “fear, disbelief and anger” as “the fallout continues to be felt.”¹⁵

Moreover, there have been many articles and features focused explicitly on the experience of law enforcement officers that day. And reports of officers’ accounts of January 6 have not abated as time has gone on. An extensive profile in *The New York Times* quoted various Capitol Police Officers’ views of the day and generalized their experiences in emotive terms, “If Jan. 6 was a national tragedy, it was also one that the officers who served at the Capitol that day experienced cruelly and intimately in their own bodies.”¹⁶ Though much of this reporting is national, the effects on local D.C. law enforcement spill over into the community at large. One spouse of a Capitol Police Officer described how, “[h]er husband couldn’t stay away from the news, online and on television, even though it only fueled his anger.”¹⁷ Mr. Grillo cannot be fairly tried in the same district where these officers and their families reside.

The particularities of Mr. Grillo’s case also weigh in favor of finding presumptive prejudice. Although Mr. Grillo was not personally identified in every article, the actions he is

¹⁴ Annie Linskey, *Biden goes after Trump for lies and self-aggrandizement in Jan. 6 insurrection anniversary speech*, WashingtonPost.com (Jan. 6, 2022), https://www.washingtonpost.com/politics/biden-goes-after-trump-for-lies-and-self-aggrandizement-in-jan-6-insurrection-anniversary-speech/2022/01/06/fdb39c14-6eff-11ec-aaa8-35d1865a6977_story.html.

¹⁵ Joe Heim, *As Jan. 6 anniversary approaches, fear, disbelief and anger still felt in Capitol Hill neighborhood*, WashingtonPost.com (Jan. 4, 2022), <https://www.washingtonpost.com/dc-md-va/2022/01/04/capitol-hill-neighborhood-jan6-attack-insurrection/>.

¹⁶ <https://www.nytimes.com/2022/01/04/magazine/jan-6-capitol-police-officers.html>

¹⁷ *Id.*

accused of are emblematic of the average January 6 defendant routinely described by the media.¹⁸ For his jury, Mr. Grillo is, essentially, the face of the events of January 6. He is hardly an individual with whom a prospective juror would be unfamiliar. Indeed, “a pattern of bitter prejudice throughout the community ... render[s] the voir dire an unsatisfactory device for selection of an impartial jury.” *United States v. Ehrlichman*, 546 F.2d 910, 916 n.8 (D.C. Cir. 1976).

And while two years have passed since the events of January 6, the media coverage has not only not subsided, but rather, it has remained constant due to the Congressional hearings. The hearings about the events of January 6 began in early June of 2022 and extended through mid-July.¹⁹ All eight sessions drew at least 10 million viewers, with the initial session drawing 20 million viewers and the finale 18 million viewers.²⁰ This renewed attention weighs in favor of finding that the inundation of media coverage has incurably tainted the jury pool. Subsequent charges and sentences against January 6 defendants have dominated headlines.²¹ This continued, constant attention is not something that potential jurors in the District of Columbia can easily “shut from sight.” *Skilling*, 561 U.S. at 382

C. The Timing of the Proceedings Weigh in Favor of Granting the Motion for Transfer of Venue.

As discussed, the Congressional hearings have dominated news coverage in the past months. While the events of January 6 never receded fully from the public’s conscience, the hearings have brought renewed scrutiny and focus on the day. Although Mr. Grillo’s trial will occur over two years after the conduct alleged, it will take place after extensive, in-depth public

¹⁸ Aymann Ismail, *We Know Exactly Who the Capital Rioters Were*, Slate (Jan. 4, 2022), <https://slate.com/news-and-politics/2022/01/january-6-capitol-riot-arrests-research-profile.html>.

¹⁹ *Hearings*, Select Committee to Investigate the January 6th Attack on the United States Capitol, <https://january6th.house.gov/legislation/hearings>.

²⁰ *About 18 Million People Tuned In To Finale of Jan. 6 Hearings*, Bloomberg (July 22, 2022), <https://www.bloomberg.com/news/articles/2022-07-22/about-18-million-people-tuned-in-to-finale-of-jan-6-hearings>

²¹ *Jan. 6 Hearings*, AP News, <https://apnews.com/hub/capitol-siege>.

discussion of the event in question. In *Skilling*, the Court found that the passage of roughly four years between the media frenzy around Enron and the trial constituted enough time to weaken the claim of presumed prejudice. 561 U.S. at 383. Here, while almost two years have passed, the media attention has remained constant.

II. Conclusion

For the foregoing reasons, Mr. Grillo respectfully moves the Court to transfer these proceedings to the Northern District of Georgia, Atlanta Division; Middle District of Florida, Ocala Division; Eastern District of North Carolina; or the Eastern District of Virginia, pursuant to the *Skilling* factors weighing in favor of finding presumptive prejudice.

Respectfully submitted,

By: /s/ Michael Padden

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Certificate of Service

I certify that a copy of the forgoing was filed electronically for all parties of record on this 31st day of January, 2023.

/s/ Michael Padden

Michael Padden
Assistant Federal Defender
Attorney for Mr. Phillip Sean Grillo

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
v.)	Case No. 21-690 (RCL)
)	
PHILLIP SEAN GRILLO,)	
)	
Defendant.)	
_____)	

ORDER

Pending before the Court is the motion of defendant Phillip Sean Grillo to transfer these proceedings to the Northern District of Georgia, Atlanta Division; Middle District of Florida, Ocala Division; Eastern District of North Carolina; or the Eastern District of Virginia.

ORDERED that the motion is DENIED/GRANTED as to the Northern District of Georgia, Atlanta Division.

ORDERED that the motion is DENIED/GRANTED as to the Middle District of Florida, Ocala Division.

ORDERED that the motion is DENIED/GRANTED as to the Eastern District of North Carolina.

ORDERED that the motion is DENIED/GRANTED as to the Eastern District of Virginia.

Signed this _____ day of _____, 2023.

ROYCE C. LAMBERTH
UNITED STATES DISTRICT JUDGE