

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

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| UNITED STATES OF AMERICA | : | |
| | : | |
| v. | : | Case No. 21-cr-690 (RCL) |
| | : | |
| PHILIP SEAN GRILLO, | : | |
| | : | |
| Defendant. | : | |

**GOVERNMENT’S RESPONSE TO
DEFENDANT’S MOTION REGARDING VOIR DIRE**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this response to the Defendant’s Motion In Limine for Attorney-Conducted Voir Dire and for Individual, Sequestered Voir Dire of Jurors. (ECF No. 57.) The Defendant’s motion, filed on February 21, 2023, requests that the Court permit the attorneys to individually question prospective jurors and that potential jurors be sequestered from each other during questioning. *Id.* at 2.¹

It is the government’s intention to submit a list of proposed voir dire questions for the Court to pose to the entire panel, which will be consistent with the questions posed to other panels in the January 6, 2021 riot related cases.

It is the understanding of undersigned counsel that, consistent with the practice of other judges in this District, the Court conducts voir dire by posing a set of questions to the entire jury panel and then follows up with individualized questions to prospective jurors as necessary, one by one, out of the presence of the entire panel. The government concurs with this process.

¹ As a preliminary matter, Defendant’s motion was not timely filed and may be denied on that basis. *See* ECF Minute Entry 12/07/2022, setting deadline for motions as 1/31/2023.

Regarding the Defendant's request that counsel for the parties be permitted to ask follow-up questions directly to potential jurors, the government opposes that technique in this case.

A trial court has "broad discretion" in "deciding what questions to ask prospective jurors." *United States v. Tsarnaev*, 142 S. Ct. 1024, 1034 (2022). With limited exceptions, no particular questions are constitutionally required, unless a failure to ask them would "render the trial fundamentally unfair." *See Mu'Min v. Virginia*, 500 U.S. 415, 425-26 (1991) (rejecting any requirement to ask questions about the content of pretrial publicity to which prospective jurors were exposed).

The Supreme Court has repeatedly said that jury selection falls "'particularly within the province of the trial judge.'" *Tsarnaev*, 142 S. Ct. at 1034 (quoting *Skilling v. United States*, 561 U.S. 358, 386 (2010); *see also Mu'Min*, 500 U.S. at 424 ("[T]he trial court retains great latitude in deciding what questions should be asked on voir dire.")). A trial court's broad discretion in this area includes deciding what questions to ask prospective jurors. *See Mu'Min*, 500 U.S. at 427.

Attorney-conducted voir dire will take more time and will increase the risk that improper or leading questions are asked to prospective jurors. In this case, it makes more sense to conduct voir dire consistent with district practices – not just in January 6 cases, but generally, all criminal cases. This process is tried and true and produces fair and neutral panels of juries. Such a process further promotes judicial economy, helping to fairly, but expediently, try the matter before the Court.

Respectfully submitted,

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