

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

_____)	
UNITED STATES,)	
)	
v.)	Crim. No. 21cr35
)	
JACK WADE WHITTON,)	
Defendant.)	
_____)	

**MOTION TO TRANSFER VENUE AND
MEMORANDUM OF LAW IN SUPPORT THEREOF**

COMES NOW, the defendant, Jack Wade Whitton, by counsel, and respectfully moves the Court, pursuant to Federal Rule of Criminal Procedure 21, for a transfer of venue so that he may be tried by an impartial jury as guaranteed by the Fifth and Sixth Amendments to the United States Constitution.

I. BACKGROUND

The case arises out of the events at the United States Capitol on January 6, 2021.

Specifically, Defendant is charged in a superseding indictment with assaulting, resisting, or impeding and inflicting bodily injury upon an officer, in violation of 18 U.S.C § 111(a)(1) and (b) and 2) (Count 9); assaulting, resisting, or impeding an officer using a dangerous weapon in violation of 18 U.S.C. §§ 111(a)(1) and (b) and 2) (Count 10); civil disorder, in violation of 18 U.S.C. § 231(a)(3) (Counts 14 and 17); assaulting an officer in violation of 18 U.S.C. Sec. 111(a)(1) (Count 16); entering and remaining in a restricted building or grounds with a deadly or dangerous weapon, in violation of 18 U.S.C. §§ 1752(a)(1) and (b)(1)(A) (Count 18); disorderly and disruptive conduct in a restricted building or grounds with a deadly or dangerous weapon, in violation of 18 U.S.C. §§ 1752(a)(2) and (b)(1)(A) (Count 19); engaging in physical violence in

a restricted building or grounds with a deadly or dangerous weapon, in violation of 18 U.S.C. §§ 1752(a)(4) and (b)(1)(A) (Count 20); and act of physical violence in the Capitol grounds or buildings, in violation of 40 U.S.C. § 5104(e)(2)(F) (Count 24). (Doc. 154, Superseding Indictment).

II. ARGUMENT

The Fifth and Sixth Amendment of the United States Constitution entitle criminal defendants to a fair trial by an impartial jury. *See In re Murchison*, 349 U.S. 133, 136 (1955). Accordingly, Federal Rule of Criminal Procedure 21(a) instructs that district courts “must transfer the proceeding . . . 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.”

When examining a Rule 21 motion to transfer venue, a court should consider (1) the size and characteristics of the community; (2) the nature and extent of pretrial publicity; (3) the proximity between the publicity and the trial; and (4) evidence of juror partiality. *Skilling v. U.S.*, 561 U.S. 358, 378-81 (2010). A review of these factors makes apparent that the Court should transfer Mr. Whitton’s case, preferably to the Northern District of Georgia where he resides.

1. Size and Characteristics of the Community

The size and characteristics of Washington DC clearly weigh in favor of transferring venue. Washington, D.C. is a relatively small community, with a population of about 700,000.¹ Approximately 93% of voters in Washington voted against Donald Trump, rendering it the least

¹ *See US Census, Quick Facts - District of Columbia*, <https://www.census.gov/quickfacts/DC> (last visited March 28, 2022)

diverse political population in the country.² The antipathy towards Donald Trump and his supporters in the District is obvious.

Since Donald Trump was elected President in 2016, large numbers of District of Columbia residents have engaged in protests targeting Trump personally, his properties or his supporters. On President Trump's Inauguration, anti-Trump protestors destroyed businesses, cars, and other property.³ The District's community antipathy towards President Trump continued throughout his presidency. Indeed, hardly a week went by during Trump's presidency without an anti-Trump protest at the White House, the Capitol, the Trump Hotel, local universities, or another District locale.

The potential jury pool in the District of Columbia is prejudiced against supporters of Donald Trump generally and the January 6th protestors specifically is a given.

2. Nature and Extent of Pretrial Publicity

The nature and extent of pretrial publicity related to the events of January 6th weigh in favor of transferring venue. District residents have been bombarded with wall-to-wall coverage of the January 6th events, related arrests, criminal charges and, more recently, prosecutorial outcomes. The National Guard was deployed to Washington, D.C. for more than four months after the incident.⁴ The Mayor of D.C. declared a state of emergency and implemented a 6 p.m.

² See *Election results: The 2020 presidential race*, Politico.com (2021); <https://www.politico.com/2020-election/results/president> (last visited March 28, 2022).

³ *Violence flares in Washington during Trump inauguration*, Reuters, <https://www.reuters.com/article/us-usa-trump-inauguration-protests-idUSKBN1540J7> (last visited March 28, 2022).

⁴ See *National Guard troops leave US Capitol more than 4 months after January 6th riot*, FOX5 Washington DC, <https://www.fox5dc.com/news/national-guard-troops-leave-us-capitol-morethan-4-months-after-january-6th-riot> (last visited March 28, 2022).

curfew for weeks.⁵ The District implemented significant closures of roads and public spaces in advance of President Biden's inauguration in direct response to the violence at the Capitol on January 6th.⁶ The Department of Homeland Security declared that government offices were potential targets of violent domestic extremists who were emboldened by the "recent mob assault" on the Capitol.⁷ Every potential juror in the District was impacted by the events on Capitol Hill on January 6th.

Local Washington, D.C. news was filled with coverage of the January 6th events and resulting aftermath, replete with references to "insurrectionists," "white supremacists," and even suggestions of a "race war."⁸ Speaker Pelosi went so far as to declare that Donald Trump was an accessory to murder.⁹

⁵ Press Release, Mayor Muriel Bowser, January 6, 2021, <https://mayor.dc.gov/release/mayorbowser-issues-mayor-s-order-extending-today-s-public-emergency-15-days-a1> (last visited March 28, 2022).

⁶ *DC Inauguration Updates: 4 Bridges Between DC, Virginia Closing; National Mall Closed*; NBC4 Washington, <https://www.nbcwashington.com/news/local/dc-inauguration-updates-fridayclosures-threats-national-mall/2542719/> (last visited March 28, 2022).

⁷ *DHS Warns of Heightened Threats from Violent Domestic Extremists*, NPR, <https://www.npr.org/2021/01/28/961470061/dhs-warns-of-heightened-threats-from-violent-domestic-extremists> (last visited March 28, 2022).

⁸ *Analysis: A race war evident long before the Capitol siege*, WTOP, <https://wtop.com/national/2021/02/analysis-a-race-war-evident-long-before-the-capitol-siege-2/> (last visited March 28, 2022); *Dozens charged in Capitol Riots Spewed Extremist Rhetoric*, NBC4 Washington (2021), <https://www.nbcwashington.com/news/national-international/dozenscharged-in-capitol-riots-spewed-extremist-rhetoric/2575102/> (last visited March 28, 2022); *Trump Legacy on Race Shadowed by Divisive Rhetoric, Actions*, NBC4 Washington (2021), <https://www.nbcwashington.com/news/politics/trump-legacy-on-race-shadowed-by-divisiverhetoric-actions/2536591> (last visited March 28, 2022).

⁹ *Nancy Pelosi on the Capitol Hill insurrection: Trump was an accessory to the crime of murder*, MSNBC.com (2021), <https://www.msnbc.com/msnbc/watch/nancy-pelosi-on-the-capitol-hill-insurrection-trump-was-an-accessory-to-the-crime-of-murder-99705925960> (last visited March 28, 2022).

Considering the local media's focus on the events of January 6th, dramatically augmenting the national media coverage of political statements made about the Capitol defendants, there is little doubt that the District of Columbia is a hostile jurisdiction for the trial of Mr. Whitton.

3. The Proximity of Publicity to Trial

The proximity of the publicity to District residents to Mr. Whitton's anticipated trial date weigh in favor of transferring venue. The events of January 6th continue to be reported daily in the news. The one-year anniversary of the event, as well as recent sentencings of high-profile January 6th defendants, have kept the matter in the forefront of local discourse.¹⁰ Indeed, there are almost daily stories about the congressional investigation into the events of January 6th, revealing new details and the failure of many people who have been subpoenaed by the congressional committee to cooperate.

4. Evidence of Juror Partiality

Democratic political leaders, including the President, control the political narrative and are sending a message to all prospective jurors that defendants like Mr. Whitton are "insurrectionists" and "white supremacists." Democratic political leaders are signaling that anything but a guilty verdict would be unacceptable. Given that approximately 95% of the voters in D.C. voted against Donald Trump, it is hard to imagine how D.C.'s jury pool in particular could be anything but partial. However, the facts of this case require the jury to be entirely unbiased, during a time of exceptional political divide in this country.

¹⁰ *QAnon Shaman Jacob Chansley gets 41 months in prison for role in Jan. 6 riot*, NBC4 Washington (2021), <https://www.nbcwashington.com/news/national-international/qanonshaman-jacob-chansley-gets-41-months-in-prison-for-role-in-jan-6-riot/2885734/> (last visited March 28, 2022).

5. Alternate Venue

Given all of the foregoing, Mr. Whiton cannot obtain a trial by an impartial jury in the District of Columbia. Mr. Whiton submits that the Western District of Virginia would be an appropriate alternate venue. Mr. Whiton is a resident of the Northern District of Georgia. Further, Mr. Whiton is currently detained in the Northern District of Georgia.

While pretrial publicity of the Capitol incident has been nationwide, only residents of Washington D.C. personally experienced the day's events as well as the ensuing months of onerous security measures - street closures, a curfew, or National Guard presence. By contrast, residents of north Georgia have not been warned that domestic terrorists are threatening their hometown, nor is the area overrun by D.C. politics. The parties are significantly more likely to find an unbiased jury panel in a community in north Georgia where the media exposure has been more limited.

III. CONCLUSION

The lurid hearings of the House Select Committee to Investigate the January 6th Attack on the United States Capitol have dramatically enhanced the predisposition of Washington, D.C. residents against the January 6th defendants. (See Mr. Whiton's Motion to Compel Discovery [Doc 199] filed today.)

Based on the foregoing, Mr. Whiton has demonstrated that he faces significant prejudice in the District of Columbia, prohibitive of a fair and impartial jury as guaranteed by the Fifth and Sixth Amendments to the United States Constitution. Accordingly, Mr. Whiton requests that this Honorable Court transfer this matter to the United States District Court for the Northern District of Georgia pursuant to Fed. R. Crim. P. 21(a).

Respectfully submitted,

JACK WADE WHITTON

By Counsel

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Certificate of Electronic Service

I hereby certify that on March 28, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, with consequent service on all parties of record.

 /s/
John C. Kiyonaga