

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

UNITED STATES OF AMERICA,

v.

Case No. 1:21-cr-175-TJK

JOSEPH R. BIGGS, et al.,

Defendants.

**JOSEPH BIGGS' MOTION FOR 10-DAY EXTENSION TO UPDATE DISTRICT
OF COLUMBIA JURY PREJUDICE DATA FOR MOTION TO CHANGE VENUE**

Defendant Joseph Biggs respectfully moves for an extension of time of ten (10) days -- from September 30 until October 10 -- to supplement the motion to change venue filed by Henry Tarrío (ECF No. 349). The other four defendants join in this Motion. The government has consented to the Motion. The government also graciously agreed to a simple proposal set forth below which would keep the current hearing date of October 28 in place. *See*, July 7, 2022 Scheduling Order, ECF No. 426 at 2. The October 28 hearing on venue would still go forward.

By way of background, and from Mr. Biggs' viewpoint, Mr. Tarrío's motion to change venue (ECF No. 349) was filed on May 5, 2022. About four weeks later, on the evening of Thursday, June 9, the House of Representatives' January 6 Select Committee put on a polished, effective, shrill and in some quarters highly misleading primetime production of hearings about the events of January 6, 2021. Opening night of the hearings on June 9 prominently and repeatedly featured -- and by full name -- "Joseph Biggs," defendant "Dominic Pezzola" and the sprawling fraternal organization known as "the Proud Boys" (made famous in part by then-candidate Donald Trump while debating Joe Biden in September of 2020). Immediately, also on June 9, Tarrío's motion to change venue was joined and supplemented by Biggs (ECF No. 386) and defendant Zachary Rehl (ECF No. 384). To be sure, this case (21-cr-175-TJK), as well as several other

January 6 cases, have been marked by extensive briefing, public opinion polling, legal argument and media coverage on the issue of and palpable concern about pre-existing or inherent jury pool contamination in the District of Columbia with respect to January 6. Since the time of the House Select Committee's hearings commencing June 9, that issue and concern has been heightened. *See*, ECF Nos. 349, 351, 368, 376, 384, 386, 389, 399, 403 (June 16, 2022 Motion for Continuance) and 406 (June 16, 2022 Biggs' Supplement to Motion to Change Venue). Even a month before the June 9 House Select Committee hearing, attorneys for Henry Tarrío noted that four polls cited by a number of January 6 defendants in venue transfer motions put juror bias issue numbers against Proud Boys and others in the 90% to 93% range. *See*, Tarrío venue change motion, ECF 349. In the case of one Oath Keeper defendant, whose trial and jury selection before Judge Mehta started this week, defense counsel noted that, according to polling of District residents "over 66% as personally impacted by a 'fear of personal safety.'" *United States v. Caldwell*, Memorandum in Support of Motion to Transfer Venue, 22-cr-00015- APM, ECF 93, 22 (April 15, 2022). Even six months ago, these were extraordinary numbers and observations.

However, no follow-up public polling of the April, 2022 Washington, D.C. juror pool was performed until this month. That polling is nearly half complete and still under way. It was commenced later than undersigned counsel would have liked because four (4) separate national polling organizations (two on each American coast) turned down the work once the organization understood and "wrestled with" on whose behalf the D.C. public opinion updating would be performed. Over a month ago, Biggs's counsel finally reached a fifth candidate, Lindsay Olson of InLux Research and Analytics, Dallas, Texas, to conduct a Multi-District and Multi-Period Comparative Community Attitude Study for four federal districts, including of course the District

of Columbia. Ms. Lindsay started the work two and a half weeks ago. She and her company also performed similar polling culminating in April of this year for two defendants in the Oath Keepers trial currently before Judge Mehta at 22-cr-0015. So she is updating a baseline of her previous work which should be highly useful to the Court on the issue of D.C. juror pool attitudes about January 6. Finally, Ms. Lindsay is performing the work for a total fee of only \$30,000. Based on recent and current *voir dire* proceedings observed by attorneys, lay people, and media alike, the completion and later submission of Ms. Lindsay's work is critical to a fair trial in not only 21-cr-175 but in other cases well. *See, e.g., Andrea Mitchell Reports*, David Henderson: "The Oath Keepers have already lost this trial because they've lost jury selection," MSNBC, April 27, 2022. <https://www.msnbc.com/andrea-mitchell-reports/watch/david-henderson-the-oath-keepers-have-already-lost-this-trial-because-they-ve-lost-jury-selection-149372485849>

Once again, defendants Tarrío, Rehl, Pezzola and Ethan Nordean join in the instant motion for an extension, and the government has consented to the motion. Moreover, in phone calls of September 26 and 28, the government also agreed with Biggs to propose to the Court the following changes to briefing deadlines on Mr. Tarrío's venue change motion set out the Court's five-page Scheduling Order of July 6, 2022 (ECF No. 426 at page 2):

1. The deadline to supplement to motion to change venue is moved from Friday, September 30 until Monday, October 10, 2022.
2. The government's response(s) is moved from October 14 to October 21, 2022.
3. Any defense reply will be filed in 3 days or by October 24.
4. The scheduled hearing of October 28 at 9:30 AM on Mr. Tarrío's motion to change venue would go forward.

Accordingly, and for good cause shown, defendant Joseph Biggs and his counsel ask for an additional ten (10) days or until October 10 to supplement the Tarrío motion to change venue.

Respectfully submitted,

COUNSEL FOR JOSEPH RANDALL BIGGS

Dated: September 29, 2022

By: /s/ J. Daniel Hull
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CERTIFICATE OF SERVICE

The undersigned certifies that on September 29, 2022, he served a true and correct copy of the foregoing defendant Biggs' Motion for a 10-Day Extension of Time to Update District of Columbia Jury Prejudice Data for Motion to Change Venue upon all counsel of record via the Electronic Case Filing (ECF) system.

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