UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
v.	)	
	)	Crim. Action No. 21-0497 (ABJ)
ANTHONY ALEXANDER ANTONIO,	)	
	)	
Defendant.	)	

ORDER

Defendant Anthony Alexander Antonio, who is charged in a nine-count indictment for his actions at the United States Capitol on January 6, 2021, *see* Superseding Indictment [Dkt. # 26], has moved to transfer venue. Def.'s Mot. for Change of Venue and Mem. of Law in Supp. [Dkt. # 43] ("Mot."). He argues that the Court will be unable to seat the impartial jury guaranteed by the Fifth Amendment to the United States Constitution due to the "overwhelmingly negative media attention and the adverse consequences of the event on the lives of the citizens of the District of Columbia." *See* Mot. at 2–5.

While every defendant is unique and every motion must be assessed on an individual basis, it is important to note at the outset that neither this Court nor any other court in this district has granted a motion to transfer a January 6 defendant's trial to another venue in advance of voir dire. *See, e.g.*, *United States v. Garcia*, No. 21-cr-0129 (ABJ), 2022 WL 2904352, at *14–*15 (D.D.C. July 22, 2022); Order, *United States v. Williams*, No. 21-cr-618 (ABJ), at 2, 7–31 (D.D.C. Aug. 12, 2022) [Dkt. # 63]; Order, *United States v. Adams*, No. 21-cr-212 (ABJ), at 2–3, 6–16 (D.D.C. Jan. 24, 2023) [Dkt. # 60]; *see also* Order, *United States v. Samsel*, No. 21-cr-537 (JMC), at 3–8 (D.D.C. Dec. 14, 2022) [Dkt. # 227]; *United States v. Ballenger*, No. 21-cr-

719 (JEB), 2022 WL 16533872, at *2–*4 (D.D.C. Oct. 28, 2022); *United States v. Eicher*, No. 22-cr-38 (CKK), 2022 WL 11737926, at *3–*4 (D.D.C. Oct. 20, 2022); *United States v. Nassif*, No. 21-cr-421 (JDB), 2022 WL 4130841, at *8–*10 (D.D.C. Sept. 12, 2022); *United States v. Brock*, No. 21-cr-140 (JDB), 2022 WL 3910549, at *4–*8 (D.D.C. Aug. 31, 2022); Op. and Order, *United States v. Strand*, No. 21-cr-85 (CRC), at 2–3 (D.D.C. Aug. 17, 2022) [Dkt. # 89]; Min. Order, *United States v. Parks*, No. 21-cr-411 (APM) (D.D.C. Aug. 5, 2022); *United States v. Rhodes*, 610 F. Supp. 3d 29, 56–59 (D.D.C. 2022); Min. Entry, *United States v. Williams*, No. 21-cr-377 (BAH) (D.D.C. June 10, 2022); Min. Entry, *United States v. McHugh*, No. 21-cr-453 (JDB) (D.D.C. May 4, 2022); Order, *United States v. Webster*, No. 21-cr-208 (APM), at 2 (D.D.C. Apr. 18, 2022) [Dkt. # 78]; Order, *United States v. Alford*, No. 21-cr-263 (TSC), at 5–14 (D.D.C. Apr. 18, 2022) [Dkt. # 46]; Mem. Op. and Order, *United States v. Brooks*, No. 21-cr-503 (RCL), at 6–7 (D.D.C. Jan. 24, 2022) [Dkt. # 31]; *United States v. Bochene*, 579 F. Supp. 3d 177, 180–82 (D.D.C. 2022); Min. Order, *United States v. Fitzsimons*, No. 21-cr-158 (RC) (D.D.C. Dec. 14, 2021); Min. Order, *United States v. Reffitt*, No. 21-cr-32 (DLF) (D.D.C. Oct. 15, 2021); Omnibus Order, *United States v. Crowl*, No. 21-cr-28 (APM), at 10–11 (D.D.C. Sept. 14, 2021) [Dkt. # 415]. Defendant Antonio has not pointed to any unique circumstances that bear on venue that would warrant a different outcome in his case; indeed, he does not identify any unique circumstances at all.

The Court is bound by authority that instructs that voir dire is the proper means to determine whether it will be possible for a fair and impartial jury to be selected. Since defendant has not raised concerns that cannot be addressed through voir dire, the motion to transfer venue is **DENIED**.

BACKGROUND

Anthony Alexander Antonio has been charged in a nine-count indictment with the following offenses:

> Count I – civil disorder, in violation of 18 U.S.C. § 231(a)(3);
>
> Count II – obstruction of an official proceeding and aiding and abetting, in violation of 18 U.S.C. §§ 1512(c)(2), 2;
>
> Count III – destruction of government property and aiding and abetting, in violation of 18 U.S.C. §§ 1361, 2;
>
> Count IV – entering and remaining in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(1);
>
> Count V – disorderly and disruptive conduct in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(2);
>
> Count VI – engaging in physical violence in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(4);
>
> Count VII – entering and remaining in certain rooms in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(C);
>
> Count VIII – disorderly conduct in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(D); and
>
> Count IX – parading, demonstrating, or picketing in a Capitol building, in violation of 40 U.S.C. § 5104(e)(2)(G).

Superseding Indictment. According to the criminal complaint filed by FBI Special Agent Charles Rooney, defendant participated in the protests at the U.S. Capitol building on January 6, 2021. Statement of Facts [Dkt. # 1-1] ("SOF") at 2. He posted a video on TikTok on January 6, stating, "[W]e're going to be out there in D.C. celebrating P.A. being decertified . . . we're stopping the steal, we're coming back, Trump 2020." SOF at 19.[1] At approximately 1:22 pm on January 6,

1 While there is no time stamp provided, defendant states in the video that it is "past 12:00." SOF at 19.

surveillance footage captured defendant in front of a barricade on the Lower West Terrace that Metropolitan Police Department ("MPD") and U.S. Capitol Police Department ("USCP") officers were defending, shouting, "You want war? We got war. 1776 all over again." SOF at 6. Defendant wore a black tactical bulletproof vest adorned with a "Three Percenter" patch. SOF at 2. He allegedly climbed the scaffolding along with other rioters. SOF at 7. As law enforcement retreated up a set of stairs toward the Lower West Terrace Entrance Tunnel, defendant followed. SOF at 8.

Surveillance footage then captured defendant standing on the Lower West Terrace, outside of the tunnel that leads into the Capitol building that was the location of a long, intense battle between police officers trying to hold the line and rioters attempting to enter. SOF at 8. Shortly thereafter, the crowd in the tunnel began passing around a riot shield, allegedly taken from one of the officers. SOF at 8. According to the Special Agent's statement, defendant "raised his arm and fist in a gesture consistent with celebration" while looking toward the moving riot shield. SOF at 8. Approximately three minutes later, defendant entered the tunnel with "an identical riot shield and shoved his way to the front of the crowd." SOF at 8.

MPD officers eventually pushed rioters out of the Lower West Terrace tunnel. SOF at 9. The crowd dragged an MPD officer down a set of stairs that led to the Lower West Terrace, and defendant allegedly squirted water and threw a plastic water bottle in the officer's direction. SOF at 9. Defendant made his way to the mouth of the tunnel and began speaking with the officers holding back the crowd. SOF at 10. An officer's body camera captured some of defendant's statements, including, "We will not back down." SOF at 10. Defendant received a bullhorn from someone and addressed the crowd standing on the Lower West Terrace, instructing the group that they were "holding the line" and "not moving until we get our way." SOF at 11. The large crowd

began pushing toward the Lower West Tunnel entrance and continued fighting with law enforcement officers. SOF at 12.

Around 4:00 p.m., surveillance footage captured defendant in the "mass of bodies pushing against the officers in the tunnel[,]" where he "reached out and took an object" appearing to be a gas mask from "the area of an officer." SOF at 12–13. Defendant eventually pushed his way out of the tunnel. SOF at 13. As other rioters broke open windows on the side of the Lower West Terrace tunnel, defendant asked them to lift him up to the window. SOF at 14. He then allegedly climbed through the window and entered an interior room of the U.S. Capitol Building, where he picked up a piece of furniture with another individual and tossed it to the side. SOF at 15–16. Later the same day, defendant gave an interview describing how they "penetrated the Capitol Building," and stated, "Patriots, we took the Capitol and we're not stopping." SOF at 17. He further described how they "barricaded the door, broke everything, so we have something to use against 'em." SOF at 17.

Defendant was arrested on April 20, 2021, in Wilmington, Delaware. *See* Arrest Warrant [Dkt. # 5]. While he does not provide an appropriate alternate venue for his case, he maintains that the District of Columbia is a constitutionally impermissible venue for his trial because of: (1) the impact of the events of January 6, 2021 on the citizens of the District of Columbia, Mot. at 3–5, and (2) the overwhelming negative pretrial publicity in the District of Columbia surrounding the events on January 6, *id.* at 1, 3.

LEGAL STANDARD

The Sixth Amendment guarantees criminal defendants the right to a trial "by an impartial jury of the State and district wherein the crime [was allegedly] committed," U.S. Const. amend. VI, and Article III specifies that "such Trial shall be held in the State where the said Crimes [were

allegedly] committed." U.S. Const. art. III, § 2, cl. 3; *see also id.* ("[W]hen not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.").

Federal Rule of Criminal Procedure 21 authorizes the transfer of a case to another district, though, for prejudice or for convenience. A court has the discretion to transfer "for the convenience of the parties, any victim, and the witnesses, and in the interest of justice" under Rule 21(b), but Rule 21(a) requires that upon the defendant's motion, "the court *must* transfer the proceeding against that 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." Fed. R. Crim. P. 21(a) (emphasis added). The Supreme Court reiterated this principle in *Skilling v. United States*, 561 U.S. 358, 378 (2010), and it recognized that transfer of the proceeding to a different district "if extraordinary local prejudice will prevent a fair trial" is a "basic requirement of due process."

The question now is whether that level of prejudice has been shown at this early stage in the proceedings. The Supreme Court went on to explain in *Skilling* that a "presumption of prejudice . . . attends only the extreme case." 561 U.S. at 381. It reviewed the cases in which it had concluded that juror prejudice could be presumed – *Rideau v. Louisiana*, 373 U.S. 723 (1963), *Estes v. Texas*, 381 U.S. 532 (1965), and *Sheppard v. Maxwell*, 384 U.S. 333 (1966) – and noted that in each, it had "overturned a conviction obtained in a trial atmosphere that [was] utterly corrupted by press coverage." 561 U.S. at 380 (internal quotation marks omitted). It took pains to caution that those "decisions . . . 'cannot be made to stand for the proposition that juror exposure to . . . news accounts of the crime . . . alone presumptively deprives the defendant of due process.'" *Id.*, quoting *Murphy v. Florida*, 421 U.S. 794, 798–99 (1975).

> Prominence does not necessarily produce prejudice, and juror *impartiality*, we have reiterated, does not require *ignorance*.

Skilling, 561 U.S. at 381 (emphasis in original).

Furthermore, the D.C. Circuit has instructed that it is preferable to conduct voir dire in the first instance to determine whether it will be possible for a fair and impartial jury to be selected. *See United States v. Haldeman*, 559 F.2d 31, 62–63 (D.C. Cir. 1976) (en banc) (per curiam) (counseling against a "pre-voir dire conclusion" that "a fair jury cannot be selected"). That is because "pretrial publicity, even if pervasive and concentrated, cannot be regarded as leading automatically and in every kind of criminal case to an unfair trial." *Neb. Press. Ass'n v. Stuart*, 427 U.S. 539, 565 (1976). Instead, a "thorough examination of jurors on voir dire" is the most important tool for ensuring that a defendant receives a fair and unbiased jury. *Id.* at 554–55; *see also Haldeman*, 559 F.2d at 63 ("[I]f an impartial jury actually cannot be selected, that fact should become evident at the voir dire.").

ANALYSIS

I. Voir dire is the appropriate way to assess potential juror prejudice and bias.

The motion before the Court posits that "[w]hile the government may argue that the jury selection process can cure any potential issues created, Mr. Antonio should not be forced to run such a risk," relying upon the Supreme Court's decision in *Skilling v. United States*. *See* Mot. at 3–4. *Skilling* was a case brought in the wake of the Enron bankruptcy, in which Jeffrey Skilling, Enron's former Chief Executive Officer, was charged in a scheme to deceive investors by overstating the company's financial health. 561 U.S. at 367–69.

But in *Skilling*, the Supreme Court *rejected* the notion that a change of venue should have been granted, even though the local publicity after the Enron collapse had been relentless. *Id.* at

381–85. Moreover, the impact of the alleged fraud was felt particularly keenly in Houston, where Enron was located, and many residents had lost their jobs or hard-earned pensions heavily invested in Enron stock. *Id.* at 375–76. Skilling argued that the trial court erred in refusing to move the trial to a different venue based on a presumption of prejudice given "the community passion aroused by Enron's collapse and the vitriolic media treatment aimed at him." 561 U.S. at 377 (internal quotation marks omitted); *see also id.* at 369 (Skilling maintained that "hostility toward him in Houston, coupled with extensive pretrial publicity, had poisoned potential jurors").

The Supreme Court differentiated the case before it from those where juror prejudice had been presumed, and it highlighted three relevant factors: (1) "the size and characteristics of the community in which the crime occurred"; (2) whether pretrial publicity "contained [a] confession or other blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight"; and (3) the amount of time that had elapsed since the alleged crime and whether the passage of time had led to "diminished" media attention. 561 U.S. at 382–84.[2]

Ultimately the Court found that the "sheer number of victims" was not enough to trigger a presumption of prejudice; "[a]lthough the widespread community impact necessitated careful identification and inspection of prospective jurors' connections to Enron, the extensive screening questionnaire and followup *voir dire* were well suited to that task." *Id.* at 384.

If it was appropriate to proceed to voir dire and attempt to seat a jury in that case, the *Skilling* decision does not do much to mandate a change of venue in this one, where (1) both the alleged objective of the charged offenses and the effects felt were largely national; (2) the media

2 A fourth factor relevant to the post-conviction review in *Skilling* that does not bear on this motion was whether the jury's verdict reflected an absence of prejudice, and the Court took note of the fact that Skilling had been acquitted on some counts. 561 U.S. at 383–84.

coverage of the event as a whole – while substantial – has been largely national as well; and (3) importantly, with a few exceptions, the media coverage has largely related to the conduct of the rioters as a whole, and it has addressed individuals who may have organized or inspired them, but it has not been focused on the defendant personally as it was in *Skilling*. While defendant maintains that the characteristics of the community and the pretrial publicity present constitutional concerns in his case, Mot. at 3–5, a consideration of the *Skilling* factors suggests that his motion is premature.

a. *Size and Characteristics of the Community*

The first factor does not support a change in venue. Washington, D.C. has approximately 700,000 residents, and about 426,000 of those residents may be in the jury pool in this case.[3] It is not a particularly large community, but it is not a small or insular one, either. *See Skilling*, 561 U.S. at 382 (differentiating between communities with 150,000 residents and larger communities with venires of approximately 600,000 individuals), comparing *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1044 (1991) (plurality opinion) and *Rideau*, 373 U.S. at 724. The Master list of available jurors is large enough to include individuals who have paid little or no attention to the January 6 cases. It includes several hundred thousand District residents who may not be involved in policy or politics or the operation of the federal government at all. While it is not the

3 The Jury Office reported that the Master Jury Wheel was comprised of 426,277 citizens as of December 16, 2022. Jury Office for the U.S. District Court for the District of Columbia, Master Jury Wheel (2022) (accessed Dec. 16, 2022) (on file with Jury Office). The 2020 United States census estimated the District's population at 689,545. *The District of Columbia Gained More Than 87,000 People in 10 Years*, United States Census Bureau (Aug. 25, 2021), https://www.census.gov/library/stories/state-by-state/district-of-columbia-population-change-between-census-decade.html.

largest district in the country, the size of the Washington, D.C. jury pool weighs against transfer in this instance.

As for the characteristics of the community, defendant asserts that because the citizens of the District of Columbia were "directly impacted" by the events of January 6, 2021, it is "difficult, if not impossible, to imagine how anyone so impacted could sit as an impartial trier of fact." Mot. at 3–4. The only "direct impacts" the defendant identifies, though, are the imposition of a curfew and "the interruption of normal daily activities during the event and shortly thereafter." *Id.* at 2.

The curfew was only in place for one night. *See* Nick Boykin, Matt Pusatory & Jonathan Franklin, *DC lifts curfew after riots at the Capitol, Public Emergency extended for 15 days*, WUSA9 (Jan. 7, 2021), https://www.wusa9.com/article/news/local/dc/washington-dc-curfew-amid-unrest-at-capitol-building/65-becf9868-3413-4cf8-a930-cbb8f2813f2b. And defendant does not expand on what other "interruption of normal daily activities" residents faced. The road closures around the Capitol did not profoundly affect the bulk of area residents; the attack on the Capitol took place during the pandemic, when most government and downtown offices were closed, and all but essential employees were working remotely. Public gatherings were already discouraged in Washington at this time, *see* Mayor's Order 2020-127, Gov't of the Dist. Of Columbia (Dec. 18, 2020), https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/Mayor%27s%20Order%20127%2012-18-2020.pdf (extending public emergency and public health emergency through March 31, 2021, and imposing the following through January 15, 2021: "Restaurants shall return to having no indoor dining"; "Non-essential businesses are required to telework, except in person staff needed to support minimum business operations"), and all

Americans had been encouraged to participate in the inauguration virtually. Joint Statement from Bowser, Hogan & Northam on Planning for the 59th Presidential Inauguration (Jan. 11, 2021), https://mayor.dc.gov/release/joint-statement-bowser-hogan-and-northam-planning-59th-presidential-inauguration. Also, the temporary disruption in travel was short-lived and centered around the Capitol building itself, and the motion ignores the fact that a substantial portion of D.C. residents do not live or work or go to school on Capitol Hill and seldom even need to drive by the area. For these same reasons, the deployment of the Metropolitan Police and military personnel around the Capitol building did not affect most residents. Moreover, this Court has been provided with no basis to assume that District residents would be so annoyed by a narrow set of street closures that they would be unable to serve as fair-minded jurors nearly two years after the restrictions were lifted.

Therefore, the size of the Washington, D.C. jury pool weighs against transfer in this case, and other community characteristics – including the impact of the events of January 6, 2021 on the lives of residents – do not weigh in favor of a transfer of venue.

b. *Pretrial Publicity*

Defendant also argues that the "overwhelmingly negative media attention," particularly in Washington D.C, points to a finding that there is a presumption of prejudice. Mot. at 1, 3. The January 6 cases have undoubtedly attracted nationwide media attention, but they are not unique in this regard. For example, in *Haldeman*, a grand jury indicted three high-level officials in the Nixon administration for "a wide-ranging conspiracy designed to impede a grand jury investigation into the break-in at the Democratic National Committee [ ] headquarters in the Watergate Office Building," charging what was, at the time, "an unprecedented scandal at the highest levels of government." *Haldeman*, 559 F.2d at 51–52. And yet, even though the case received

"extraordinarily heavy coverage in both national and local news media," *id.* at 59, juries were successfully seated; the D.C. Circuit declined to find that the defendants' due process rights were violated by the district court's refusal to grant a change of venue. *See id.* at 62–64.

This is not a unique situation; the government points to a number of high profile cases where publicity alone did not warrant a transfer:

> In the half century since *Rideau* [, 373 U.S. 723, 724 (1963), a case where defendant's "interrogation by the sheriff and admissions by Rideau that he had perpetrated the bank robbery, kidnapping, and murder" was broadcast to approximately 100,000 people over three days in a parish with a population of about 150,000], the Supreme Court has never presumed prejudice based on pretrial publicity. . . . In fact, courts have declined to transfer venue in some of the most high-profile prosecutions in recent American history. *See In re Tsarnaev*, 780 F.3d 14, 15 (1st Cir. 2015) (per curiam) (capital prosecution of Boston Marathon bomber); *Skilling*, 561 U.S. at 399 (fraud trial of CEO of Enron Corporation); *United States v. Yousef*, 327 F.3d 56, 155 (2d Cir. 2003) (trial of participant in 1993 World Trade Center bombing); *United States v. Moussaoui*, 43 F. App'x 612, 613 (4th Cir. 2002) (per curiam) (unpublished) (terrorism prosecution for conspirator in September 11, 2001 attacks); *Haldeman*, 559 F.2d at 70 (Watergate prosecution of former Attorney General John Mitchell and other Nixon aides).

Gov't's Opp. to Mot. [Dkt. # 46] at 7.

In those instances, the safeguard against a biased jury has been an "extensive voir dire" with a "detailed inquiry into the sources and intensity of the [ ] exposure to [pretrial] publicity." *Haldeman*, 559 F.2d at 69; *see also id.* at 64 n.43 ("It is our judgment that in determining whether a fair and impartial jury could be empanelled the trial court did not err in relying less heavily on a poll taken in private by private pollsters and paid for by one side than on a recorded, comprehensive voir dire examination conducted by the judge in the presence of all parties and their counsel pursuant to procedures, practices and principles developed by the common law since the reign of Henry II"); *Tsarnaev*, 780 F.3d at 17 ("[C]oncerns about jurors who have fixed opinions or

emotional connections to events, or who are vulnerable to improper influence from media coverage, are legitimate concerns. The court and the parties are diligently addressing them through the voir dire process.") (brackets omitted); *Skilling*, 561 U.S. at 389 ("Inspection of the questionnaires and *voir dire* of the individuals who actually served as jurors satisfies us that . . . the selection process successfully secured jurors who were largely untouched by Enron's collapse."); *Yousef*, 327 F.3d at 155 ("[T]he District Court conducted an extensive voir dire and the jurors that were picked had either never heard of Yousef or could not remember any of the details of his alleged involvement in the World Trade Center bombing."). Here too, voir dire will allay defendant's concerns.

The media coverage of the events of January 6, while substantial, has been largely concerned with the group of protestors as a whole. While much has been published about the people who have been charged in general, the press has tended to focus more specifically on a handful of individuals with unique characteristics or those who have been charged with the most serious offenses, including organizing others. Defendant has not directed the Court to a single article or broadcast disseminated by a local or Washington-based national news outlet that named him personally or reported on his role in the events. He has not come forward with a single fact that gives rise to a concern that even one member of the jury pool knows who he is. But even in a case where an individual participant in the events of January 6 has attracted national attention, the voir dire process provides a full opportunity to explore whether any juror has read or heard or seen anything about the defendant, and whether the juror has formed an opinion as a result. Because there has been no information specific to this defendant publicized in the local media, much less the sort of highly prejudicial information that worried the Supreme Court, the second *Skilling* factor does not necessitate a change in venue.

c. *Amount of Time Elapsed Since January 6, 2021*

The third factor is the amount of time that has passed since January 6, 2021, and whether the passage of time has led to "diminished" media attention. *Skilling*, 561 U.S. at 383. While defendant does not address this factor in his motion, the Court finds that this factor also weighs against transferring the case.

Although more than two years have elapsed since January 6, 2021, there has recently been renewed attention on the events of that day because of the widespread coverage of the congressional hearings conducted by the Select Committee to Investigate the January 6th Attack on the United States Capitol. However, the congressional hearings and the media coverage have related primarily to the events of January 6 in general and the role that public officials and their advisors and campaigns may have played in bringing them about, not the particular activities of any individual defendant who entered the Capitol.[4] After the first hearing, which did include footage of the attack on the Capitol and the outnumbered law enforcement officers trying to protect it,[5] the focus moved to legal and political machinations behind the scenes to substitute electors or overturn the results of the elections in other ways, and there has been little mention of the rioters

---

4 *See, e.g.*, Caroline Linton, Kathryn Watson, Stefan Becket, Caitlin Yilek & Melissa Quinn, *House Jan. 6 Committee Votes to Refer Criminal Charges for Trump*, CBS News (Dec. 19, 2022), https://www.cbsnews.com/live-updates/house-january-6-committee-final-hearing-watch-live-stream-today-2022-12-19/.

5 *See, e.g.*, Domenico Montanaro, *New Revelations and 3 Other Takeaways from the First Jan. 6 Committee Hearing*, NPR (June 10, 2022), https://www.npr.org/2022/06/10/1104103404/new-revelations-and-other-takeaways-from-first-jan-6-committee-hearing (the hearing revealed "[n]ot previously publicly seen video footage from police body cameras, Capitol hallway and office footage, as well as police radio communication").

themselves.[6] Unsurprisingly, the defendant has not been named or singled out in any of the presentations.

Finally, the Court's assessment that presuming prejudice would be unwarranted in this case under the *Skilling* factors has been borne out by the actual experience of other courts in this district. Courts have qualified enough jurors to empanel juries, with the requisite number of alternates, in all January 6 cases to date. *See* Min. Entries (Nov. 7–8, 2022), *Williams*, No. 21-cr-618; Min. Entries (Sept. 28–29, 2022), *Alford*, No. 21-cr-263; Min. Entries (Sept. 27–29, 2022), *Rhodes*, No. 22-cr-15 (as to defendants Rhodes, Meggs, Harrelson, Watkins, and Caldwell); Min. Entries (Sept. 19–20, 2022), *Strand*, No. 21-cr-85 ; Min. Entry, *United States v. Bledsoe*, No. 21-cr-204 (1) (BAH) (D.D.C. July 18, 2022); Min. Entry (June 27, 2022), *Williams*, No. 21-cr-377; Min. Entry, *United States v. Hale-Cusanelli*, No. 21-cr-37 (TNM) (D.D.C. May 23–24, 2022); Min. Entry (Apr. 25, 2022), *Webster*, No. 21-cr-208; Min. Entry, *United States v. Thompson*, No. 21-cr-161 (RBW) (D.D.C. Apr. 11, 2022); Min. Entry, *United States v. Robertson*, No. 21-cr-34 (CRC) (D.D.C. Apr. 5, 2022); Min. Entries (Feb. 28, 2022; Mar. 1, 2022), *Reffitt*, No. 21-cr-32.

There has been no indication in any January 6 trial in this courthouse that prejudice is so widespread in the venire that the ordinary voir dire process will be insufficient to guarantee a fair jury, and so there is no reason to transfer this case without first trying to select a jury here.

II. The In Lux Survey is flawed.

While the defense memorandum does not address this subject in any detail, there is a stray reference on the last page to "another jury survey filed in *U.S. v. Caldwell*, 21-cr-028, Dkt. 654-1

---

6 *See, e.g.*, Alan Feuer, *Key Findings From the Jan. 6 Committee's Report, Annotated*, N.Y. Times (Dec. 19, 2022), https://www.nytimes.com/2022/12/19/us/politics/jan-6-committee-key-findings.html.

(APM)." Mot. at 6. The survey is not further identified or attached, and it may be that this sentence was included in the memorandum inadvertently. *See id.* In any event, because defendant points to no particular findings in the In Lux survey filed in *Caldwell*, and he has made no effort to apply the information it contains to his case in particular, the Court has been given no reason to revisit its previous analysis of the same survey, which was set out in its opinion denying a motion for change of venue in *United States v. Garcia*. *See Garcia*, 2022 WL 2904352 at *13.[7] As the Court observed in the *Garcia* case, "the inartful questions in all of the submitted surveys, and the analysts' proclivity for overgeneralizing based on the results, demonstrate why courts have found surveys to be a poor substitute for properly conducted voir dire." *Id.*

CONCLUSION

For all of these reasons, defendant's motion to transfer venue is **DENIED**.

SO ORDERED.

AMY BERMAN JACKSON
United States District Judge

DATE: April 11, 2023

7 In *Garcia*, the defense submitted several surveys, including the In Lux Survey, which this Court found did not support a finding of prejudice because it was not representative of the D.C. jury pool and included flawed questions, as "many of its questions ask about how respondents feel about current events, or to speculate, rather than how they would behave during the formality of a jury trial." *Garcia*, 2022 WL 2904352 at *11, *13.