

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA )  
)  
v. ) Case No. 21-cr-00116  
)  
WILLIAM MCCALL CALHOUN, JR )  
Defendant. )

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DEFENDANT'S MOTION TO TRANSFER VENUE AND  
MEMORANDUM OF LAW IN SUPPORT THEREOF

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COMES NOW, Defendant, William McCall Calhoun, Jr., by and through counsel, Jessica N. Sherman-Stoltz, Esq., and respectfully moves this Court, pursuant to Federal Rules of Criminal Procedure 21(a), and hereby files this Motion and Memorandum to transfer venue so that he may be tried by an impartial jury as is guaranteed by the Fifth and Sixth Amendments to the United States Constitution. Mr. Calhoun submits that detrimental pretrial publicity and community prejudice in the District of Columbia are so likely to have affected the jury pool that the venire must be presumed to be tainted. Mr. Calhoun proposes that this matter be moved to the U.S. District Court for the Middle District of Georgia. The Middle District of Georgia is where he resides, was arrested, and where witnesses for the defense are located.

Additionally, Mr. Calhoun implores this Court that a jury trial questionnaire must be employed as a necessary precaution to further screen out bias in the jury pool.

BACKGROUND

Defendant's charges before this Court arise out of the events that took place at the United States Capital on January 6, 2021. On January 15, 2021 a complaint, affidavit in support, arrest warrant and motion for detention were filed against Mr. Calhoun in the U.S. District Court for the Middle District of Georgia (Macon). The complaint charged Mr. Calhoun with one count of entry to Restricted Building or Grounds, in violation of 18 U.S.C. § 1752(a), one count of Violent Entry or Disorderly Conduct in violation of 40 U.S.C. § 5104(e)(2), and one count of Obstruction of an Official Proceeding, in violation of 18 U.S.C. § 1512(c)(2). Mr. Calhoun was arrested that same day, and he made his first appearance before the U.S. District Court for the Middle District of Georgia (Macon).

The Defendant was subsequently charged by Indictment in the District of Columbia in the instant matter on February 12, 2021, and arraigned before this Court on Monday, March 1, 2021.

On January 12, 2022, the Government filed a superseding Indictment in the District of Columbia, charging Mr. Calhoun with one count of obstruction of an official proceeding, in violation of 18 U.S.C. § 1512(c)(2) and 2, one count of entering and remaining in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(1), one count of disorderly and disruptive conduct in a restricted building or grounds, in violation of 18 U.S.C. § 1752(a)(2), one count of disorderly conduct in a Capital Building, in violation of 40 U.S.C. § 5104(e)(2)(D), and parading demonstrating, or picketing in a Capital Building, in violation of 40 U.S.C. § 5104(e)(2)(G).

Mr. Calhoun has been villainized and publicly humiliated for his alleged actions on January 6, 2021. Most recently The 65 Project has filed an ethics complaint to the State Bar of Georgia requesting that the Office of General Counsel investigate the actions taken by Mr. Calhoun, and allege that on January 6, 2021 Mr. Calhoun violated the Rules of Professional Conduct, and the oath taken to be admitted to the State Bar of Georgia. *See* Exhibit A – The 65 Project Ethics Complaint.

There are numerous online articles regarding Mr. Calhoun’s presence at the Capital Building on January 6, 2021, and just as many more articles regarding his social media activity leading up to and during the day on January 6<sup>th</sup>. All these articles can be accessed via an online google search.

#### LEGAL STANDARD

The Fifth and Sixth Amendment of the United States Constitution entitle criminal defendants to a fair trial by an impartial jury. “The great value of the trial by jury certainly consists in its fairness and impartiality.” *United States v. Burr*, 25 F. Cas. 49, 51 (CC Va. 1807). The right to an impartial jury is a cornerstone of due process. *In re Murchison*, 349 U.S. 133, 136 (1955). 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.”

The factors courts consider in determining whether to grant a change of venue request are (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. *See Skilling*, 561 U.S. 358, 378-81 (2010). While the *Skilling* factors likely apply to the instant matter, in some cases, a potential jury pool can be presumed to be irredeemably biased, when the alleged crime results in “effects . . . on [a]community [that] are so profound and pervasive that no detailed discussion of the [pretrial publicity and juror partiality] evidence is necessary.” *United States v. McVeigh*, 918 F. Supp.1467, 1470 (W.D. Okla. 1996) (transferring the trial of the Oklahoma City bombing suspects from Oklahoma City to the District of Colorado).

Select Litigation, LLC., commissioned by the Federal Public Defender’s Office for the District of Columbia, conducted a public opinion poll among eligible jury citizens in the District of Columbia and Atlanta Division of the Northern District of Georgia. A copy of the report is attached as Exhibit B. In turn, Select Litigation retained News Exposure, a leading media research firm, to analyze news coverage related to the January 6, 2021 events. The results of this public opinion poll will show this Court that a potential jury pool in the District of Columbia can be presumed to be irredeemably biased.

ARGUMENT

If Mr. Calhoun were to be tried in Washington, D.C., the jury pool in his case would be comprised of those who voted nearly unanimously against Donald Trump, and whom have been barraged over the last year with propaganda about a “white nationalist” attack and an “insurrection” at the Capitol.<sup>1</sup> The lives of the members of every potential jury pool were disrupted in the days, weeks, and months following January 6<sup>th</sup>. Over 25,000 troops patrolled the neighborhoods in Washington, DC.<sup>2</sup> Many of which remained stationed there until May.<sup>3</sup> For several months after January 6, 2021, travel and transportation were severely limited and disrupted in Washington, DC. Curfews were implemented and some residents were forced to shelter in place.<sup>4</sup> The recent jury selection in Mr. Guy Reffitt’s trial only renewed DC residents’ anger as to the January 6, 2021 events.<sup>5</sup> The unavoidable community prejudice, and particularized prejudice specifically against Mr. Calhoun, render the venire so greatly prejudiced against him that he cannot obtain a fair and impartial trial in Washington, D.C.

A. *Skilling* Factors:

1. Size and Characteristics of the Community

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<sup>1</sup> <https://www.nbcnews.com/politics/justice-department/jury-selection-first-jan-6-trial-revives-dc-residents-anger-capitol-at-rcna17954>

<sup>2</sup> <https://www.acludc.org/en/news/dc-cant-afford-nation-move-january-6th-insurrection>

<sup>3</sup> <https://dcist.com/story/22/01/05/dc-locals-jan-6-capitol-insurrection-anniversary/>

<sup>4</sup> [https://www.cnn.com/politics/live-news/congress-electoral-college-vote-count-2021/h\\_4802bd3869eb3a4bc6512083add579df](https://www.cnn.com/politics/live-news/congress-electoral-college-vote-count-2021/h_4802bd3869eb3a4bc6512083add579df); Press Release, Mayor Muriel Bowser, January 6, 2021, <https://mayor.dc.gov/release/mayor-bowser-issues-mayor-s-order-extending-today-s-public-emergency-15-days-a1> (last visited Nov. 22, 2021).

<sup>5</sup> <https://www.nbcnews.com/politics/justice-department/jury-selection-first-jan-6-trial-revives-dc-residents-anger-capitol-at-rcna17954>

Washington D.C. is a relatively small community, with a population of about 700,000 and an estimated potential jury pool of less than 500,000.<sup>6</sup> Approximately 93% of voters in Washington voted against Donald Trump, rendering it the least diverse political population in the country.<sup>7</sup>

DC residents' disapproval of Donald Trump has also been widely publicized.<sup>8</sup> When Trump was elected in 2016 there were protests in DC, where businesses, cars, and property was destroyed.<sup>9</sup> The potential jury pool in Washington, DC, is highly prejudiced against supporters of Donald Trump, and those that participated in the January 6, 2021 events at the Capital Building.

## 2. Nature and Extent of Pretrial Publicity

The nature and extent of the pretrial publicity surrounding the January 6, 2021 events at the Capital Building is immense and ongoing. Most recently there was a renewed media push around the one-year anniversary of the Capital events, and the first trial related to those criminally charged for their activities in the Capital Building

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<sup>6</sup> See District of Columbia, The Urban Institute (September 2021), <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/projects/state-fiscal-briefs/washington-dc> (last visited Nov. 18, 2021).

<sup>7</sup> See Election results: The 2020 presidential race, Politico.com (2021); <https://www.politico.com/2020-election/results/president> (last visited Nov. 18, 2021).

<sup>8</sup> <https://dcist.com/story/17/09/08/dc-hates-trump-more-than-twice-as-m/>; <https://nationalpost.com/news/world/downtrodden-in-d-c-federal-employees-are-in-tears-with-the-reality-of-working-for-donald-trump>;

<sup>9</sup> Violence flares in Washington during Trump inauguration, Reuters, <https://www.reuters.com/article/us-usa-trump-inauguration-protests-idUSKBN15401J> (last visited Nov. 19, 2021).

on January 6, 2021. The residents of Washington, DC lived in a state of fear and frustration for months following January 6, 2021. NPR published that “the insurrection left a mark on lawmakers, staffers, reporters and the Capitol police force, which was overwhelmed by thousands of rioters. More than 140 police officers were injured that day and several died in the aftermath.”

<https://www.npr.org/2022/01/06/1070598403/a-year-after-the-jan-6-attack-congress-is-plagued-by-a-toxic-atmosphere>.

The press coverage following January 6<sup>th</sup> was worldwide, but the residents of DC were living in the aftermath of the “recent mob assault” on the Capital Building.<sup>10</sup> 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.”<sup>11</sup> While speaking in Washington, D.C., President Biden referred to Trump supporters involved in the January 6th incident as “a group of thugs, insurrectionists, political extremists, and white supremacists.”<sup>12</sup>

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<sup>10</sup> 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 Nov. 22, 2021).

<sup>11</sup> 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 Nov. 22, 2021); Dozens charged in Capitol Riots Spewed Extremist Rhetoric, NBC4 Washington (2021), <https://www.nbcwashington.com/news/national-international/dozens-charged-in-capitol-riots-spewed-extremist-rhetoric/2575102/> (last visited Nov. 22, 2021); Trump Legacy on Race Shadowed by Divisive Rhetoric, Actions, NBC4 Washington (2021), <https://www.nbcwashington.com/news/politics/trump-legacy-on-race-shadowed-by-divisive-rhetoric-actions/2536591> (last visited Nov. 22, 2021).

<sup>12</sup> 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> (last

### 3. The Proximity of Publicity to Trial

The publicity surrounding the January 6, 2021 Capital events has been constant and continuous from January 6, 2021 through current. The one-year anniversary, recent trials, plea hearings and sentencing hearings of January 6<sup>th</sup> Defendants have brought renewed media coverage and publicity. At the one-year anniversary CNN referred to the events of January 6<sup>th</sup> as “the deadly Capital insurrection.”

<https://www.cnn.com/politics/live-news/january-6-capitol-insurrection-anniversary/index.html>.

Since the events of January 6, 2021, 772 people have been charged for their part in the events (as of January 4, 2022).<sup>13</sup> More than 200 people have pleaded guilty. That is still an incredible amount of remaining, ongoing, plea hearings, trials, and sentencing hearings. The publicity is not going to end anytime soon. Mr. Calhoun’s proceedings have already been pending for fourteen months and he foresees a trial date before the end of this year.

### 4. Evidence of Juror Partiality

“I think everybody that went in there was already guilty.”

<https://www.nbcnews.com/politics/justice-department/jury-selection-first-jan-6-trial-revives-dc-residents-anger-capitol-at-rcna17954>. “Washington is, in local parlance, a small town, and many

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visited Nov. 19, 2021).

<sup>13</sup> [https://www.jan-6.com/january-6-timeline?gclid=CjwKCAjwoduRBhA4EiwACL5RP6l6WcvRPSyCKy0HYJpR9WSZzJwHgESRuh7ZAjFhoMYjDw2-y1V4PBoC788QAvD\\_BwE](https://www.jan-6.com/january-6-timeline?gclid=CjwKCAjwoduRBhA4EiwACL5RP6l6WcvRPSyCKy0HYJpR9WSZzJwHgESRuh7ZAjFhoMYjDw2-y1V4PBoC788QAvD_BwE)

of its residents are connected to the government and the attack itself.” *Id.* As that NBC news article stated, many of the Washington, DC residents are connected to the government, and the attack itself. If they weren’t personally involved in something surrounding the events of January 6<sup>th</sup>, they know someone who was. *Id.* The residents of DC perceive the January 6<sup>th</sup> events as a personal attack against themselves and their political opinions. One potential juror of Guy Reffitt’s trial said that the “riot” felt like “an attack on my home.” *Id.* People who live and work near the US Capital are still shaken by what happened. Many emergency and first responders still carry “mental and emotional burdens.” <https://www.nbcwashington.com/news/local/capitol-insurrection-january-6-riot/2928050/>. “The physical injuries suffered that day may heal, but the emotional and psychological trauma inflicted will not soon disappear.” *Id.*

#### B. The Select Litigation Report

The key findings of the Jury Pool Analysis is that prospective jurors in the District of Columbia have decidedly negative impressions of individuals arrested in conjunction with the activities of January 6, 2021. Concerning prospective jurors in the District of Columbia, the report states:

“Their bias against the defendants is evident in numerous results and is reflected in significant prejudgment of the case: a clear majority admit that they would be inclined to vote “guilty” if they were serving on a jury at the defendants’ trial. The attitudes of prospective jurors in the District of Columbia are decidedly more hostile toward the defendants than adults nationwide or prospective jurors in a demographically comparable federal court division.” Exhibit B, Report, p. 2.

Highlights of the Report include the following:

- a. 84% have an unfavorable opinion of the “people arrested for participating in

- the events at the Capitol on January 6.”
- b. An overwhelming majority of those polled of the District of Columbia jury pool have prejudged the case. When asked if the people arrested for activities related to January 6 are guilty or not guilty, 71% say “guilty,” and “3%” say “not guilty.”
  - c. While most jury-eligible District of Columbia citizens (80%) express confidence the January 6 defendants can receive a fair trial, 52% percent say that if they were on the jury they would most likely find the defendant guilty, and 2% say that they would vote “not guilty.”
  - d. Over 90% of those polled in the District of Columbia have heard or read about the January 6 event at the Capitol and most of them said the media coverage implied that the defendants were guilty.
  - e. Seven out of ten would describe the defendants as conspiracy theorists, 62% would describe them as “criminals,” 58% would describe them as “white supremacists,” 54% would describe them as members of right wing organizations, and 85% think that trying to overturn the election and keeping Donald Trump in power best describes the defendants.
  - f. 82% believe that “insurrection” is an apt description for the defendants’ actions. By contrast, only 10% believe that “patriotism” would describe their actions.

The report of Select Litigation speaks for itself. It reveals a great prejudice by Washington, DC residents, in particular, against defendants charged for their activities in the January 6, 2021, demonstrations.

C. Alternate Venue

Given the foregoing, Mr. Calhoun cannot obtain a trial by an impartial jury in the District of Columbia. Mr. Calhoun submits to this Court that the U.S. District Court for the Middle District of Georgia, Macon Division, would be an appropriate venue for his trial. Mr. Calhoun is a resident of the Middle District of Georgia, along with other witnesses of the defense. Additionally, the Middle District of Georgia, Macon Division, is where these proceedings against Mr. Calhoun began.

D. Juror Questionnaire

Mr. Calhoun submits to this Court that in either venue, a comprehensive juror questionnaire must be implemented as a means to screen jurors with bias from the jury pool.

CONCLUSION

Based on the foregoing, Mr. Calhoun has shown this Court that he will not receive a fair and impartial jury as he is guaranteed by the Fifth and Sixth Amendments to the United States Constitution. He will face significant bias and prejudice if his case proceeds to trial in the District of Columbia.

WHEREFORE, for the foregoing reasons, it is respectfully requested that the Court transfer Mr. Calhoun's case to the United States District Court for the Middle District of Georgia, Macon Division, pursuant to Fed. R. Crim. P. 21(a), and that this Court order the use of a jury questionnaire to ensure an impartial jury.

Dated: March 21, 2022.

Respectfully Submitted,

WILLIAM MCCALL CALHOUN, JR.

/s/ Jessica N. Sherman-Stoltz

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**CERTIFICATE OF SERVICE**

I hereby CERTIFY that on this the 21st day of March 2022, a true and correct copy of the foregoing *Defendant's Motion to Transfer Venue and Memorandum of Law in Support Thereof* with the Clerk of Court via the CM/ECF system, which will automatically send an email notification of such filing to all counsel of record.

/s/ Jessica N. Sherman-Stoltz

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