

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

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No. 1:21-cr-00263-TSC
	)	
RUSSELL DEAN ALFORD	)	

**DEFENDANT’S REPLY TO GOVERNMENT’S RESPONSE  
IN OPPOSITION TO MOTION FOR TRANSFER OF VENUE OR  
EXPANDED EXAMINATION OF PROSPECTIVE JURORS**

The Defendant, Russell Dean Alford, has moved the Court to transfer these proceedings to another district or, in the alternative, to allow expanded examination of prospective jurors by three devices described in his motion, including a jury questionnaire. Doc. 40.<sup>1</sup> In response, the government opposes both transfer and a questionnaire, while it “concurs” as to the other two requested devices—“allow[ing] the parties to be present during any ‘pre-screening’ questioning before formal voir dire” and “conduct[ing] individual questioning during voir dire.” Doc. 44 at 18–19 (citing Doc. 40 at 14–15). This reply addresses the two points of disagreement, transfer and questionnaire.

In seeking to rebut Mr. Alford’s arguments for transfer to another district, the government misapprehends or dismisses them as base worries about political hyperpartisanship. But the arguments rest on sound concerns about the daunting difficulty of securing a fair trial by an impartial jury in this District, given (1) the

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<sup>1</sup> As used in this pleading, “Doc.” refers to numbered documents entered on the CM/ECF docket in this case.

District’s characteristics; (2) the still-fresh events of January 6, 2021, that will frame the trial; and (3) media coverage of those events. Those concerns have particular force because the jury’s chief task likely will be to judge Mr. Alford’s subjective state of mind, not to identify his actions. *See* Doc. 40 at 2–3, 10–12 (explaining why juror prejudice looms larger over a trial in which “the most disputed element for most counts likely will be mens rea”); Doc. 8 (identifying charged mens rea for each count).

The government’s response also repeatedly emphasizes the effectiveness of voir dire as a check on juror prejudice. *See, e.g.*, Doc. 44 at 6 (arguing that “voir dire can adequately identify those D.C. residents who were so affected by January 6 that they cannot impartially serve as jurors”). Yet it opposes a tool—a jury questionnaire—that, if the case were to remain in this District, would enhance the focus and efficiency of formal voir dire. A written questionnaire would help to identify juror prejudice and conserve time for the parties and the Court itself, and the government offers no reason to disallow it, arguing only that it is unnecessary. *See id.* at 18–20.

**I. The government has not sufficiently grappled with the weighty reasons to presume prejudice and transfer venue.**

There are compelling reasons to presume prejudice in this case and transfer the proceedings to another district. In arguing that there aren’t, and that Mr. Alford’s contentions lack merit, the government misapprehends several of those contentions.

As Mr. Alford’s motion explains, the government has accused him of trying to prevent the certification of President Biden’s Electoral College victory, which more than 92 percent of D.C. voters favored in 2020. Doc. 40 at 7. That accusation naturally “heighten[s] the prejudice against Mr. Alford’s defense in this District,” even though

it should go without saying that “[c]onscientiously held political views are no reason to disqualify any juror,” *id.* Importantly, President Biden’s margin of victory in the District is just one of several data points discussed in Mr. Alford’s argument as to why the Court should presume prejudice and transfer venue. This argument is firmly rooted in the Fifth and Sixth Amendments’ guarantee of a fair trial by an impartial jury, but the government’s response reduces it to a caricature: a claim that Democratic voters will be hopelessly biased. *See* Doc. 44 at 4 (“This Court should not presume that every member of a particular political party is biased simply because this case has a political connection.”). The caricature is inaccurate, and Mr. Alford asks the Court to consider the presumptive prejudice argument as his motion presents it, not through the government’s lens.

The government’s fundamental misunderstanding of the argument pervades its response in strained analogies to other politically charged cases. For example, in *United States v. Haldeman*, 559 F.2d 31 (D.C. Cir. 1976) (en banc), *cited in* Doc. 44 at 3–4, defendants argued that pretrial publicity and jurors’ partisan political identifications meant they couldn’t fairly determine whether the defendants participated in the Watergate cover-up. 559 F.2d at 59–64. That, the government asserts, is “nearly identical” to Mr. Alford’s argument for presumed prejudice. Doc. 44 at 3. But the two actually are quite different.

In *Haldeman*, the government’s case required the jury to synthesize approximately 2½ months of testimony, *see* 559 F.2d at 82, 130 n.284, about what the defendants knew, when they knew it, and what they did about it. *See generally*

*Haldeman*, 559 F.2d at 31. Here, the facts about Mr. Alford's conduct are comparatively simple, and they likely will be undisputed in many respects, leaving jurors with a Rorschach test about his knowledge and intent. *See* Doc. 40 at 2–3; Doc. 44 at 1–2; Doc. 8. That is not remotely “identical” to the concern about prejudice in *Haldeman*, *cf.* Doc. 44 at 3, where jurors could draw from an exhaustive trial record rather than rely on intuition to assess a defendant's intent, *see* 559 F.2d at 112–19.

In other ways, too, the government's response parodies Mr. Alford's position and, as a result, misses the point.

- Mr. Alford does not “argu[e] that poll percentages . . . decide the question of a presumption of prejudice,” *cf. id.* at 6 (quoting *In re Tsarnaev*, 780 F.3d 14, 23 (1st Cir. 2015) (per curiam)). But polling about prospective jurors' preexisting opinions certainly reveals prejudice more clearly than speculation, which is the only alternative at this stage. And as Mr. Alford's motion explains, in polling about January 6 prosecutions “[r]espondents in this District . . . were much more convinced of defendants' guilt and much less ambivalent in their answers” than those from a comparator district, the Northern District of Georgia. Doc. 40 at 11 (emphasis omitted). That fact obviously “weigh[s] . . . in favor of presumed prejudice,” *id.* at 12, even if it does not on its own “decide the question,” *Tsarnaev*, 780 F.3d at 23.
- Mr. Alford does not “argue[] that prejudice should be presumed based on statements by the Vice President.” *Cf.* Doc. 44 at 16 (citing Doc. 40 at 9). Rather, his motion notes that the government has accused him of participating in “events . . . that have been ascribed once-in-a-generation infamy,” and quotes remarks by Vice President Harris while adding that she “was hardly the first” to make that ascription. Doc. 40 at 9. The Court should weigh the extent and tenor of pretrial media coverage in deciding whether prejudice ought to be presumed. *Skilling v. United States*, 561 U.S. 358, 382–83 (2010).

In short, the government's arguments should fail. For the reasons stated in Mr. Alford's motion, prejudice should be presumed and the proceedings transferred to another district where he can receive a fair trial by an impartial jury.

**II. If the case remains in this District, a jury questionnaire would help the parties and the Court to identify juror prejudice and select a jury more efficiently.**

The government’s response extols questioning of jurors as an effective tool to determine “whether individual prospective jurors have . . . disqualifying biases,” Doc. 44 at 4. It refers to voir dire 27 times in arguing against a venue transfer. *See id.* at 3–18. Despite that, the government opposes a jury questionnaire, *id.* at 18–20, a device that would be deployed under the Court’s supervision and would undoubtedly advance and streamline the task of ferreting out prospective jurors’ disqualifying biases.

Mr. Alford agrees with the government that voir dire is an essential tool to guard against juror prejudice, and that expanded examination is warranted in this case. *See id.* at 18–19. But he disagrees with its rigid insistence that all questioning be in person. The government rightly states that a fair trial does not require a jury questionnaire in the ordinary case. *Id.* at 19 n.1. But it also concedes that “some potential jurors might be unable to be impartial in January 6 cases based on disagreement with the defendants’ political aims,” *id.* at 4 (emphasis omitted)—the type of concession that does not attend the ordinary case.

If the government is right that it is “[p]ossible to pick an impartial jury” in this District, *id.* at 9, then it also is right that searching voir dire would be crucial to the task, *id.* at 3. Without a questionnaire, voir dire would needlessly start from scratch. The Court’s March 4, 2022, order continuing the trial provides adequate time for the

Court to review and approve a jury questionnaire that would allow formal voir dire to be more focused in substance and more efficient for all involved.

Accordingly, if the Court does not transfer the trial to another district, then Mr. Alford respectfully submits it should grant the request for a jury questionnaire.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that on March 21, 2022, I electronically filed the foregoing via this Court's CM/ECF system, which will send notice of such filing to all counsel of record.

Respectfully submitted,

**/s/ Tobie J. Smith**

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