

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

UNITED STATES OF AMERICA

v.

RALPH JOSEPH CELENTANO III,

Defendant.

Crim. Action No. 22-186 (TJK)

MOTION FOR TRANSFER OF VENUE

The Defendant, Ralph Celentano, cannot receive a fair trial in the District of Columbia due to presumptive prejudice which prevents the empanelment of an impartial jury. Therefore, through undersigned counsel, and pursuant to Federal Rule of Criminal Procedure 21(a), Mr. Celentano respectfully requests that this Court transfer proceedings to the Eastern District of New York, where Mr. Celentano is currently domiciled.

I. MR. CELENTANO CANNOT RECEIVE A FAIR TRIAL IN THE DISTRICT OF COLUMBIA

Mr. Celentano has a constitutional right to a fair trial under the Due Process Clause of the Fifth Amendment and the Sixth Amendment's guarantee of an "impartial jury." Const. amends. V and VI. When prejudice prevents the empaneling of an impartial jury, courts must allow for proceedings to be transferred to a less biased district. *See* Fed. R. Crim. Pro. 21(a) ("the court must transfer the proceeding against th[e] 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.") Put plainly, in some cases, the foreseeable inability of jurors to remain impartial warrants a *presumption* of prejudice. *See Skilling v. United States*, 561 U.S. 358 (2010). While voir dire is meant to present the opportunity for jurors to

show that they can “lay aside [their] impression[s] or opinion[s] and render a verdict based on the evidence presented in court,” there are certain circumstances that warrant a preemptive finding of such prejudice. *Irvin v. Dowd*, 366 U.S. 717, 723 (1961). Presumptive prejudice differs from “actual prejudice” explored through voir dire in that it presents an identifiable threat to due process so great that it cannot be negated by jurors’ responses. *Id.* at 385-95.

In *Skilling*, the Supreme Court laid out three relevant factors in evaluating whether presumptive prejudice should attach and “weigh[] heavily in favor of a change of venue”: (1) the size and characteristics of the venue community; (2) the nature of the media coverage relevant to the case; (3) the time elapsed between the purported crime and the trial.¹ *Skilling*, 561 U.S. at 382-83, 425.

A. The Small Population Size of the District of Columbia Makes it Difficult to Select an Impartial Jury.

The jury pool in the District of Columbia (“D.C.”) is drastically smaller than comparably significant venues, which substantially heightens the hurdle of identifying non-prejudiced jurors. Despite being a prominent city in terms of national narrative, the population of D.C. is just under 690,000.² Compare this to the approximate district populations of other major metropolitan centers like Los Angeles, the Central District of California (19 million),³ Chicago, the Northern

¹ A fourth factor is exclusively backward-looking and directs reviewing courts to look to any other evidence of juror prejudice during the trial proceedings. *Skilling*, 561 U.S. at 385-86.

² *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>.

³ *Our District*, United States Attorney’s Office for the Central District of California (Aug. 2, 2021), <https://www.justice.gov/usao-cdca/our-district>.

District of Illinois (9.3 million)⁴ and Brooklyn, the Eastern District of New York (8 million)⁵ (where Mr. Celentano proposes that the Court grant the transfer of venue).

The limited jury pool readily distinguishes this case from those in which courts have determined that a defendant can receive a fair trial despite the considerable local impact of the crime. *Skilling*, involved a former executive of Enron during the infamous accounting scandal. *Id.* at 367. Many citizens in the Houston area were directly affected by the financial fallout of Enron’s actions. However, the Supreme Court held that the size and characteristics of the Houston venue did not support the position of presumptive prejudice, regardless of the local effect of the case, in part because the jury pool consisted of approximately 4.5 million people. *Id.* at 382 (“Given this large, diverse pool of potential jurors, the suggestion that 12 impartial individuals could not be empaneled is hard to sustain.”). And while the effects of January 6, 2021, on the residents of D.C. are similar, if not greater, in scale to the Enron scandal, the jury pool is less than a quarter of that in *Skilling*.

B. The Data is Clear – The Residents of the District of Columbia are significantly and uniquely prejudiced against the January 6 Defendants.

The common sense notion that the events of January 6 had a pervasive prejudicial effect on jury-eligible citizens of D.C. is clearly supported by data. Two recent juror surveys were conducted to compare the biases held against the January 6 defendants by residents of D.C. versus the residents of other districts, and the results are staggering.

i. The Select Litigation Poll

⁴ United States District Court for the Northern District of Illinois, <https://www.ilnd.uscourts.gov/Pages.aspx?nfieOeUa3+I=#:~:text=The%20United%20States%20District%20Court,population%20of%209.3%20million%20people>.

⁵ United States District Court for the Eastern District of New York, <https://www.nyed.uscourts.gov/#:~:text=The%20district%20comprises%20the%20counties,population%20of%20ei ght%20million%20people>.

On behalf of all indigent defendants charged in relation to January 6, the Federal Public Defender for the District of Columbia retained Select Litigation to survey the D.C. jury pool as well as the Atlanta Division of the Northern District of Georgia. *See* Exhibit 1, Select Litigation Jury Survey Report, February 4, 2022. What is apparent from the summary of Select Litigation’s findings, is that the vast majority of jury-eligible citizens of D.C. are so deeply prejudiced against January 6 defendants, that the only way for Mr. Celentano to receive a fair trial is to transfer the trial to a different jurisdiction.

Select Litigation polled 400 potential jurors in the District of Columbia, and the numbers are striking:

- 84% of those polled have unfavorable opinions of those arrested for participating in the January 6 demonstrations;
- 62% would characterize these individuals as criminals;
- 71% have already formed the opinion that these individuals are guilty of the charges brought against them;
- 82% believe “insurrection” is the correct description for the actions of the defendants charged in relation to January 6; and
- 85% have already concluded that those who entered the Capitol had the specific intent to overturn the election.

See Exhibit A, ¶¶ 9, 10, 14, 15, 16

What the above numbers demonstrate is that D.C. residents have overwhelmingly prejudged January 6 defendants and are predisposed to believing the January 6 defendants are guilty. And, in Mr. Celentano’s case, what is particularly significant is that a large majority of

D.C. residents have already made up their minds about an element essential to proving one of the most serious charges against Mr. Celentano.

Under Count Seven of the Indictment, Mr. Celentano is charged with Obstruction of an Official Proceeding and Aiding and Abetting in violation of U.S.C. § 1512(c)(2). To prove that Mr. Celentano “corruptly” obstructed an official proceeding, the government must prove the defendant acted with the specific intent to obstruct a Congressional proceeding (based on the government’s theory - the counting of electoral votes). *See* Indictment, ECF No. 14, Count 7. The findings from the Select Litigation polling demonstrate that an overwhelming majority of jury-eligible D.C. residents have, before hearing any evidence, already reached the conclusion that those who entered the Capitol on January 6 were acting with that specific intent. They concluded that the defendants were:

- Trying to overturn the election and keep Donald Trump in power (85%)
- Insurrectionists (76%); and/or
- Trying to overthrow the United States government (72%).

Exhibit 1, ¶ 15, 18.

The above numbers establish that a typical *voir dire* will not be sufficient in the instant case to reveal potential jurors deep-rooted biases, as *voir dire* does not usually entail asking jurors about their thoughts on each element of the offenses charged. And asking jurors to state whether they have reached conclusions that they cannot set aside during the trial will not reveal such prejudgment because jurors do not always understand which of their opinions are relevant. *See United States v. Tsarnaev*, 968 F.3d 24, 58 (1st Cir. 2020), *cert granted*, 141 S. Ct. 1683 (2021) (observing that asking potential jurors about whether they had read anything that influenced their opinion or otherwise made them biased in the Boston Marathon bombing case

was not likely to reveal bias in part because prospective jurors may be unaware of such bias (quoting *Smith v. Phillips*, 455 U.S. 209, 221-22 (1982)) (internal quotations omitted).

Some of the conflicting numbers in the Select Litigation poll support the concept that jurors are not always aware of their biases and which of their biases are relevant to the case they are deciding. For example, 78% of those who said that they believed the January 6 defendants will receive a fair trial, also believe that the defendants who entered the Capitol were trying to overthrow the government. *See* Exhibit 1, ¶ 16. And 82% who believe the January 6 defendants can receive a fair trial also believe that the term “insurrection” is the correct description for their actions. *Id.*

Furthermore, what is particularly remarkable from the Select Litigation poll is how deeply rooted the prejudice against January 6 defendants is in D.C. residents compared to residents of other districts. Select Litigation surveyed 400 jury-eligible citizens in the Atlanta Division of the Northern District of Georgia, and the findings show that a January 6 defendant is far more likely to receive a fair trial in the Atlanta area, which is demographically similar to Washington D.C., than in D.C. For example:

- While 84% of those polled in D.C. have an unfavorable view of those arrested in relation to January 6, only 54% in the Atlanta Division do;
- 54% of Atlanta division respondents believe that the January 6 defendants are guilty, compared to 71% of D.C. respondents; and
- While more than half of those polled in D.C. said they are more likely to vote “guilty” if on a jury, less than half of the respondents in the Atlanta division responded similarly.

Exhibit A, ¶ 23.

What the Select Litigation findings clearly articulate is that Mr. Celentano cannot receive a fair trial in the District of Columbia.

ii. In Lux Research Poll

An additional survey of potential jurors in the District of Columbia, and potential jurors in three other federal judicial districts was conducted by In Lux Research. In Lux Research was retained by counsel for Connie Meggs and Thomas Edwards Caldwell, two defendants charged in relation to the events of January 6, before the Honorable Amit P. Mehta in Case No. 21-CR-028. *See* Exhibit 2, In Lux Research Jury Survey Report. In addition to polling potential jurors in D.C., In Lux Research also polled potential jurors in the: (1) Middle District of Florida – Ocala Division; (2) Eastern District of North Carolina; and (3) Eastern District of Virginia. *See* Exhibit 2, pg. 1, fn 2. Just as with the Select Litigation poll, the results are alarming and make it apparent that a fair and impartial jury cannot be selected in D.C. For example:

- 72% of the D.C. respondents said they are likely to find the January 6 defendants guilty despite being given the choice, “it is too early to decide.” The median in the Study among the four districts was 48%;
- 85% of those polled in D.C. characterize the events of January 6th as criminal in nature, even when given options to reserve judgment on that question. The median among the four districts was 54%;
- 40% of the D.C. respondents said they believe **all** the events of January 6th were racially motivated, despite being offered the option to reserve judgment on that question. The median in the study was 20%.

See Exhibit 2, pgs. 2-3.

One area that was explored by the In Lux Research was the personal impact of January 6 on the four districts that were surveyed. The findings reveal that the residents of D.C. were uniquely affected by the events of January 6 and therefore, uniquely prejudiced against the January 6 defendants. According to the report, “In total, 82% of DC Community respondents who answered all of the personal impact and victimization questions reported feeling personally affected, being inconvenienced, having their free movement restricted, feeling increased concern for safety, or identifying with a group they believe was targeted by events at issue in the case(s).” Exhibit 2, pg. 6. None of this is surprising - D.C. residents were directly impacted by the events of January 6 more than anyone else in the country: their daily routines were abruptly shattered by curfews,⁶ a state of emergency,⁷ resulting infrastructure closures,⁸ directions to forego traditional events like inauguration,⁹ and the descent of the military.¹⁰ And, it is more personal for D.C. residents. Nearly a third of the jobs available in D.C. are with the federal government.¹¹ This increases the likelihood that a D.C. resident had friends or family in or near the Capitol Building on January 6. Additionally, a considerable share of residents work for or know someone who works for the law enforcement agencies that responded to the Capitol on January 6.¹²

⁶ *Mayor Bowser Orders Citywide Curfew Beginning at 6PM Today*, DC.gov (Jan. 6, 2021), <https://mayor.dc.gov/release/mayor-bowser-orders-citywide-curfew-beginning-6pm-today>.

⁷ *Mayor Bowser Issues Mayor's Order Extending Today's Public Emergency for 15 Days*, DC.gov (Jan. 6, 2021), <https://mayor.dc.gov/release/mayor-bowser-issues-mayor%E2%80%99s-order-extending-today%E2%80%99s-public-emergency-15-days-a1>.

⁸ *Mapped: All the Inauguration Road, Transit, and Other Closures We Know About*, The DCist (Jan. 19, 2021), <https://dcist.com/story/21/01/13/inauguration-road-closures-dc-metro-schedule/>.

⁹ <https://twitter.com/mayorbowser/status/1348709098041315329>

¹⁰ *Ellen Mitchell, Army: Up to 25,000 National Guard in DC for Biden Inauguration*, The Hill (Jan. 15, 2021), <https://thehill.com/policy/defense/534497-army-up-to-25000-national-guard-in-dc-for-biden-inauguration/>.

¹¹ *Trends in Federal Employment in DC*, DC Policy Center (Mar. 28, 2019), <https://www.dcpolicycenter.org/publications/federal-employment-trends-dc/>.

¹² *Law Enforcement in Washington D.C.: An Explainer*, Rock the Vote (Apr. 6, 2021), <https://rockthevote.medium.com/law-enforcement-in-washington-d-c-an-explainer-c72b79ebbdcc>.

Mr. Celentano cannot receive a fair trial in D.C. The data clearly demonstrates that the overwhelming majority of D.C. residents are so deeply biased against the January 6 defendants, that it will be impossible to select a fair and impartial jury.

C. Media Coverage and the House Select Committee Hearings on the Events of January 6 Have Incurably Tainted the District's Jury Pool.

In addition to the already deeply rooted prejudice that D.C. residents have against January 6 defendants, the singularity of the media coverage of January 6 and the extended, public investigation make it near impossible to empanel a jury without presumed prejudice in D.C. The Supreme Court noted in *Skilling* that presumed prejudice could result from media coverage which “readers or viewers could not reasonably be expected to shut from sight.” 561 U.S. at 382. Of course, prospective jurors do not live in a box, devoid of media exposure. But when pretrial publicity has “inflamed passions in the host community” and “permeat[es] the trial setting ... [such] that a defendant cannot possibly receive an impartial trial,” the district court must presume local prejudice and transfer the proceeding. *United States v. Quiles-Olivo*, 684 F.3d 177, 182 (1st Cir. 2012). The Supreme Court affirmed this view in *United States v. Murphy*, citing to cases in which there was ultimately a finding of presumptive prejudice because “the news media, either in the community at large or in the courtroom itself, pervaded the proceedings.” 421 U.S. 794, 799 (1975).

The publicity surrounding January 6 has been particularly pervasive and negative in D.C., creating a disparate prejudicial effect in comparison to other venues. Media following the events of January 6 focused on inflammatory images of officers and bystanders in states of distress. In *Skilling*, the Court rejected the defendant's argument regarding extensive media coverage in part by noting that the hundreds of articles cited were “largely objective and unemotional.” 561 U.S. at 382. Those terms do not apply to

the local publicity around January 6. The language is far from neutral in the vast majority of media reports. Defendants are characterized as “insurrectionists,” “rioters,” “seditionists,” “domestic terrorists,” “white supremacists,” and “criminals.” President Biden himself described those involved in the events of January 6 as “a group of thugs, insurrectionists, political extremists, and white supremacists.”¹³

The coverage of January 6 has been broadcast and discussed on a national level, but the impact on the local population cannot be overstated. Similar to the effects of 9/11 on New Yorkers, the events of January 6 are considered once-in-a-lifetime for residents of D.C. Vice President Kamala Harris stated, after directly comparing January 6 to September 11, that “[c]ertain dates echo throughout history, including dates that instantly remind all who have lived through them where they were and what they were doing when our democracy came under assault.”¹⁴ Even a year later, local residents describe feelings of “fear, disbelief and anger” as “the fallout continues to be felt.”¹⁵

Moreover, there have been many articles and features focused explicitly on the experience of law enforcement officers that day. Considering that Mr. Celentano is accused of assaulting a Capitol Police Officer, the media coverage has an especially prejudicial effect in his case. And reports of officers’ accounts of January 6 have not abated as time has gone on. An extensive profile in *The New York Times* quoted various

¹³ *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/>.

¹⁴ Annie Linskey, *Biden goes after Trump for lies and self-aggrandizement in Jan. 6 insurrection anniversary speech*, WashingtonPost.com (Jan. 6, 2022), https://www.washingtonpost.com/politics/biden-goes-after-trump-for-lies-and-self-aggrandizement-in-jan-6-insurrection-anniversary-speech/2022/01/06/fdb39c14-6eff-11ec-aaa8-35d1865a6977_story.html.

¹⁵ Joe Heim, *As Jan. 6 anniversary approaches, fear, disbelief and anger still felt in Capitol Hill neighborhood*, WashingtonPost.com (Jan. 4, 2022), <https://www.washingtonpost.com/dc-md-va/2022/01/04/capitol-hill-neighborhood-jan6-attack-insurrection/>.

Capitol Police Officers' views of the day and generalized their experiences in emotive terms, "If Jan. 6 was a national tragedy, it was also one that the officers who served at the Capitol that day experienced cruelly and intimately in their own bodies."¹⁶ Though much of this reporting is national, the effects on local D.C. law enforcement spill over into the community at large. One spouse of a Capitol Police Officer described how, "[h]er husband couldn't stay away from the news, online and on television, even though it only fueled his anger."¹⁷ Mr. Celentano cannot be fairly tried in the same district where these officers and their families reside.

The particularities of Mr. Celentano's case also weigh in favor of finding presumptive prejudice. Although Mr. Celentano was not personally identified in every article, the actions he is accused of are emblematic of the average January 6 defendant routinely described by the media.¹⁸ For his jury, Mr. Celentano is, essentially, the face of the events of January 6. He is hardly an individual with whom a prospective juror would be unfamiliar. Indeed, "a pattern of bitter prejudice throughout the community ... render[s] the voir dire an unsatisfactory device for selection of an impartial jury." *United States v. Ehrlichman*, 546 F.2d 910, 916 n.8 (D.C. Cir. 1976).

And while almost two years have passed since the events of January 6, the media coverage has not only not subsided, but rather, it has increased due to the Congressional hearings. The hearings about the events of January 6 began in early June of 2022 and extended through mid-July.¹⁹ All eight sessions drew at least 10 million viewers, with the initial session

¹⁶ <https://www.nytimes.com/2022/01/04/magazine/jan-6-capitol-police-officers.html>

¹⁷ *Id.*

¹⁸ Aymann Ismail, *We Know Exactly Who the Capital Rioters Were*, Slate (Jan. 4, 2022), <https://slate.com/news-and-politics/2022/01/january-6-capitol-riot-arrests-research-profile.html>.

¹⁹ *Hearings*, Select Committee to Investigate the January 6th Attack on the United States Capitol, <https://january6th.house.gov/legislation/hearings>.

drawing 20 million viewers and the finale 18 million viewers.²⁰ One of the video clips that the government is intending to introduce into evidence against Mr. Celentano was part of a montage that was played during the first session of the Congressional hearings. This renewed attention weighs in favor of finding that the inundation of media coverage has incurably tainted the jury pool. Subsequent charges and sentences against January 6 defendants have dominated headlines.²¹ This continued, constant attention is not something that potential jurors in the District of Columbia can easily “shut from sight.” *Skilling*, 561 U.S. at 382

a. The Timing of the Proceedings Weigh in Favor of Granting the Motion for Transfer of Venue.

As discussed, the Congressional hearings have dominated news coverage in the past months. While the events of January 6 never receded fully from the public’s conscience, the hearings have brought renewed scrutiny and focus on the day. Although Mr. Celentano’s trial will occur two years after the conduct alleged, it will take place only a few months after extensive, in-depth public discussion of the event in question. In *Skilling*, the Court found that the passage of roughly four years between the media frenzy around Enron and the trial constituted enough time to weaken the claim of presumed prejudice. 561 U.S. at 383. Here, while almost two years have passed, the media attention has only increased. And, with the expectation that Congress will hold additional hearings in the coming months, the media will once again be saturated with the events of January 6.²²

II. Conclusion

²⁰ *About 18 Million People Tuned In To Finale of Jan. 6 Hearings*, Bloomberg (July 22, 2022), <https://www.bloomberg.com/news/articles/2022-07-22/about-18-million-people-tuned-in-to-finale-of-jan-6-hearings>

²¹ *Jan. 6 Hearings*, AP News, <https://apnews.com/hub/capitol-siege>.

²² *Cheney says Jan. 6 panel will hold more hearings in September*, The Hill (July 21, 2022), <https://thehill.com/homenews/house/3569809-cheney-says-jan-6-panel-will-hold-more-hearings-in-september/>

For the foregoing reasons, Mr. Celentano respectfully moves the Court to transfer these proceedings to the Eastern District of New York, pursuant to the *Skilling* factors weighing in favor of finding presumptive prejudice.

Respectfully submitted,

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