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)**

MR. CELENTANO'S REPLY TO GOVERNMENT RESPONSE TO MOTION FOR TRANSFER OF VENUE

Ralph Joseph Celentano III, by and through undersigned counsel, hereby submits this reply to the government's response (ECF No. 23) to Mr. Celentano's motion for transfer of venue (ECF No. 20). Contrary to the government's arguments, the polls that were cited by Mr. Celentano in his motion and the pretrial publicity and media exposure of the events of January 6 and resulting prosecutions warrant a finding of presumptive prejudice in D.C. which no amount of careful *voir dire* can cure.

I. The In Lux Research and Select Litigation Polls Indicate that Residents of D.C. are Uniquely Prejudiced Against January 6th Defendants.

The government is incorrect that Mr. Celentano "cannot show that selecting an impartial jury would be any more difficult in the District of Columbia than in the defendant's preferred district." ECF No. 23 at 8-9, 13. In fact, the results from the In Lux Research ("ILR") and Select Litigation ("SL") polls demonstrate how uniquely biased D.C. residents are against the January 6 defendants.

First, transfer is required where "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," or prejudice should be presumed. Fed. R. Crim. P. 21; *Rideau v. Louisiana*, 373 U.S. 723, 726-27 (1963). The crux of the issue is not whether a poll has been conducted in the Eastern District of New York, but rather whether the prejudice by residents of D.C. against January 6 defendants is so pronounced, that Mr. Celentano cannot receive a fair trial in D.C.

Second, and more importantly, the SL data combined with IRL data establish that there are *many* districts in which bias against January 6 defendants is significantly less pronounced than it is in D.C. The government highlights that the results from the ILR poll indicate that respondents from the other three jurisdictions surveyed were aware of the events of January 6 at similar rates as those in D.C. ECF No. 23 at 13 – 14. But simple awareness of the events of January 6 is not the relevant barometer. What matters is the *prejudice* and *bias* potential jurors have against those charged in relation to the events of January 6. And the results from the polls demonstrate that the bias and prejudice is much more pervasive in the respondents from D.C.

For example, both the SL and IRL surveys asked whether respondents would acknowledge having already formed an opinion that those charged with offenses relating to January 6 are guilty. The results are clear D.C. jurors are far more likely than jurors from other surveyed jurisdictions to indicate they already believe these defendants are guilty:

Percentage of Potential Jurors Biased Toward Guilt: ILR Q3 and SL Q4[1]				
DC	MDFL	EDNC	EDVA	MDGa
71.89 – ILR 71 – SL	37.18	48.17	48.20	54

[1] Select Litigation asked D.C. and Middle District of Georgia respondents' opinion on "whether people arrested for January 6 activities are guilty or not guilty of the charges against them," and recorded answers for "guilty," or "not guilty," and answers such as "it depends or "don't know/refused." ECF No. 20 at 4. ILR asked respondents in D.C., the Middle District of Florida, the Eastern District of North Carolina and the Eastern District of Virginia whether they were "more likely to find a defendant charged with crimes for activities on January 6th guilty or not guilty? Or is too early to decide?" ECF No. 20 at 7.

Importantly, the ILR and SL data shows that D.C. residents are outliers on *every* question designed by either surveyor to assess pretrial bias. *See* ECF. No. 20 at 4-7. These consistent results, from two different polls surveying four alternate districts, provide further evidence that individual surveys are not flukes, and not a function of question design as the government suggests. Rather, they are evidence of the pervasive bias in D.C. There does not need to be a survey of every jurisdiction in the United States to see that the bias and prejudgment among D.C. residents against the January 6 defendants is deep-seated. What is abundantly clear is that Mr. Celentano would have more hope of a fair trial *anywhere* else in the country.[2]

II. Even Careful *Voir Dire* in D.C. Will Not Result in a Fair and Impartial Jury.

The government claims that based on the jury selection process in the January 6 trials that have occurred to date, it is clear that a careful *voir dire* is the best way to ensure a fair and impartial jury. To the contrary, the results from the *voir dire* conducted in January 6 trials to date suggest that potential jurors are not the best judges of their own impartiality. For example, the government notes that in *United States v. Reffitt,* 21-CR-32 (DLF), only nine of the 56 jurors examined were struck for cause because "they had such strong feelings about the events of January 6 that they could not serve as fair or impartial jurors," after the Judge followed up in individual *voir dire*. ECF No. 23 at 28. However, based on the SL and IRL data we know that somewhere between 52 and 71 percent of D.C. prospective jurors have already concluded that *all* January 6 defendants are probably guilty. Given that, it seems highly unlikely that only 16% would find their beliefs were too strong to make them impartial.

[2] In their response, the government cites to the fact that Mr. Celentano did not request transfer to any of the four alternate districts surveyed in the two polls. Mr. Celentano does not object to trial in any of the jurisdictions studied thus far.

It is not surprising that the numbers relied on by the government belie common sense. Much of *voir dire* relies heavily on jurors' subjective views of themselves, and laypeople may not be aware of how their beliefs and biases affect the case in front of them. What we know from the polls is that the vast majority of potential jurors in D.C. are biased against anyone charged in relation to the events of January 6. The survey data undermining the results of *voir dire* in the cases the government cites means that the Court should view this case as more akin to *Irvin v. Dowd,* in which 268 of 430 prospective jurors (62%) were stricken for cause based on "fixed opinions as to the guilt of the petitioner," *Irvin,* 366 U.S. 717, 727 (1961), than to *Murphy v. Florida,* where only 20 of 78 prospective jurors (25%) were "excused because they indicated an opinion as to petitioner's guilt[.]" *Murphy,* 421 U.S. 794, 803 (1975). In the former case, the large share of prospective jurors who were stricken for cause led the Supreme Court to give "little weight" to remaining prospective jurors "statements of impartiality," because the data showed prejudgment was rampant, *Irvin,* 366 U.S. at 728; in the latter, the Court approved of the lower court's denial of transfer in part because the relatively lower number of strikes "by no means suggeste[d] a community so poisoned against petition as to impeach the indifference of jurors who displayed no animus of their own, "*Murphy,* 421 U.S. at 803. In the instant case, as in *Irvin*, available evidence shows that there is such significant pretrial prejudgment of all January 6 defendants that the Court should give little weight to statements of impartiality in *voir dire* to date.

Finally, the government claims that the fact that juries have been expeditiously picked in the January 6 trials to date demonstrates that a careful *voir dire* works to uncover those with deep-seated biases. ECF No. 23 at 27 – 28. However, it is important to note that not a single one of the juries selected in January 6 cases have acquitted any of the defendants

on any count. As the Supreme Court has recognized, "overwhelming victory for the Government" does not "undermine in any way the supposition of juror bias." *Skilling v. United States,* 561 U.S. 358, 383 (2010).

III. The Extensive and Ongoing Pretrial Publicity Related to the Events of January 6 Does Support a Presumption of Prejudice.

Mr. Celentano does not contend that extensive pretrial publicity automatically warrants a change of venue. Rather, his contention is that the ongoing and continuous saturation in the media relating to not just the events of January 6 but the prosecutions of those charged with crimes relating to the events of January 6 warrant a finding of *presumption of prejudice in this case*.

The government argues that only a small percentage of news coverage has focused on Mr. Celentano, and therefore, a careful *voir dire* can protect against "spillover prejudice" from the broader coverage of the January 6 events. ECF No. 23 at 25. However, the government and the media has made it impossible to avoid spillover prejudice. Many media outlets have sites dedicated to providing updates as to the events of January 6.[3] Those databases provide updates as to all the prosecutions in one joint space. Media outlets describe people involved with the events of January 6 as a "mob,"[4] and group all the people charged with crimes in relation to January 6 together. The government also provides little distinction between individual defendants. In Count Seven of the Indictment, Mr. Celentano is charged with Obstruction of an Official Proceeding and Aiding and Abetting, 18 U.S.C. § 1512(c)(2) and (2). ECF No. 14, Indictment. While the

[3] The New York Times has an online database called the "Capitol Riot Investigations," https://www.nytimes.com/spotlight/us-capitol-riots-investigations. NPR has a database called the "Capitol Insurrection Updates," https://www.npr.org/sections/insurrection-at-the-capitol.

[4] *Trump Sought to Lead Armed Mob to Capitol on Jan 6., Aide says*, The Washington Post (June 28, 2022), https://www.washingtonpost.com/national-security/2022/06/28/trump-sought-lead-armed-mob-capitol-jan-6-aide-says/

government has not specifically indicated who Mr. Celentano is alleged to have aided and abetted, the indication is that he is charged to have aided and abetted all the people involved with the events of January 6.[5] There is nothing that "careful *voir dire*" and an "instruction" can do to alleviate the prevailing public narrative that all January 6 defendants are responsible for the actions of the other January 6 defendants – particularly when they are charged with "aiding and abetting."

The government also argues that because the media coverage has been broadcast all over the country, it cannot be said that residents of D.C. are uniquely affected by the pretrial publicity. ECF No. 23 at 24. While it may be true that coverage of January 6 has been nationally broadcast, what the government fails to acknowledge is that the Congressional hearings, and, more importantly, the prosecution of over 800 defendants are all happening *in the District of Columbia.* As the government points out, "the events of January 6 involved thousands of participants and have so far resulted in charges against more than 800 people." ECF No. 23 at 25. Every single arrest in connection with January 6 is reported on. Every single sentence in a January 6 case is heavily reported on. Every single verdict after trial on a January 6 case is thoroughly reported on. The coverage related to the prosecutions is persistent. And all the January 6 prosecutions are happening at the Federal courthouse in D.C., mere blocks from the Capitol building. The ongoing Congressional hearings are occurring and being broadcast from the Capitol building, where the events of January 6 unfolded. This is not an ordinary case. This is the "extreme case" that *Skilling* refers to. *Skilling* 561 U.S. at 381.

[5] Mr. Celentano has filed a Motion to Dismiss Count Seven as well as Motion for a Bill of Particulars in relation to Count Seven. Both motions are pending.

IV. Conclusion

In most cases, *voir dire* is the most appropriate tool for selecting an impartial jury. However, in some case, where there is so much evidence of bias about a group of people in a particular community, and so much evidence from *voir dire* in trials of members of that group that *voir dire* is not up to the task of revealing this prejudice, due process and Rule 21 demands a change of venue. This is that type of case. Therefore, Mr. Celentano respectfully moves this Court for a transfer of venue.

Respectfully submitted,

Marissa Sherman

Marissa Sherman
Attorney for Ralph Joseph Celentano III
Federal Defenders of New York, Inc.
One Pierrepont Plaza, 16th Floor
Brooklyn, NY 11201
(718) 407-7408