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 IN LIMINE FOR ATTORNEY-CONDUCTED VOIR DIRE AND FOR INDIVIDUAL, SEQUESTERED VOIR DIRE OF JURORS

Ralph Celentano III, through counsel, pursuant to his Fifth and Sixth Amendment rights to secure the right to trial by an impartial jury and to effective assistance of counsel, U.S. Const. amends. V, VI and Federal Rule of Criminal Procedure 24(a), respectfully moves this Court to authorize attorney-conducted, individual, sequestered voir dire of the potential jurors.

This case involves highly publicized events at the United States Capitol Building on January 6, 2021. The government alleges, among other things, that Mr. Celentano acted knowingly and with intent to impede and disrupt Congress's certification of the Electoral College vote, and that he assaulted a United States Capitol Police Officer. As of January 6, 2023, there have been over 950 prosecutions of people alleged to have been involved with the events of January 6, 2021.[1] The outcomes of the prosecutions, including verdicts and sentences, saturate the media.[2] In particular, defendants who are charged with committing acts of violence against

[1] *Two Years Later, Prosecutions of Jan. 6 Rioters Continue to Grow*, The New York Times (January 6, 2023), https://www.nytimes.com/2023/01/06/us/politics/jan-6-capitol-riots-prosecutions.html.

[2] Mr. Celentano incorporates the authority he cited for the media attention on the events of January 6, 2021, from his Motion to Change Venue (ECF No. 20) and Reply to the Opposition to the Motion to Change Venue (ECF No. 26).

the police or attempting to obstruct the certification of the electoral college vote are highlighted and vilified in the news.

Many potential jurors hold impressions and opinions about the day's events that will be disqualifying for service in this case and that will otherwise inform the parties' use of peremptory challenges. To ensure that Mr. Celentano receives effective assistance of counsel in the jury selection process and a fair and impartial jury, it is imperative that a searching inquiry into pretrial publicity, potential hardship, and pre-judgment as to the events of January 6, be conducted. To maximize the value of that searching inquiry, this Court should authorize attorney-conducted, individualized, sequestered voir dire.

As to the rampant prejudgment and bias in the potential jury pool, Mr. Celentano relies on and incorporates the arguments and authority submitted in his Motion to Change Venue (ECF No. 20) and Reply to the Opposition to Change Venue (ECF No. 26), and focuses this motion on the specific remedy sought herein: that voir dire in this case is conducted by attorneys and that the potential jurors are questioned individually and sequestered from each other to obtain full, necessary information relevant to for-cause strikes and peremptory challenges while minimizing the possible taint on other potential jurors by the answers of the questioned juror.

ARGUMENT

"[P]art of the guarantee of a defendant's right to an impartial jury is an adequate voir dire to identify unqualified jurors." *Morgan v. Illinois*, 504 U.S. 719, 729 (1992) (relying on *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981); *Dennis v. United States*, 339 U.S. 162, 171-172 (1950); *Morford v. United States*, 339 U.S. 258, 259 (1950)). Specifically, the U.S. Constitution entitles a defendant to a searching voir dire for both the government and the defendant to gather the information needed to exercise juror challenges – peremptory and cause –

in a fair, intelligent and informed manner. A thorough voir dire also provides the Court with sufficient information to rule accurately on the requested removal of a juror for cause. *Morgan*, 504 U.S. at 729-730 (quoting *Rosales-Lopez*, 451 U.S. at 188 ("Without an adequate voir dire the trial judge's responsibility to remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence cannot be fulfilled"). Thorough voir dire is necessary because jurors "may have an interest in concealing [their] own bias" or "may be unaware of it." *Smith v. Phillips*, 455 U.S. 209, 221-222 (1982) (O'Connor, J. concurring).

Thus, federal courts have recognized the importance of attorney participation in the jury selection process. *See, e.g., United States v. Ible*, 630 F.2d 389 (5th Cir. 1980). In *Ible*, the Fifth Circuit stated:

> [W]hile Federal Rule of Criminal Procedure 24(a) gives wide discretion to the trial court, voir dire may have little meaning if it is not conducted at least in part by counsel. The "federal" practice of almost exclusive voir dire examination by the court does not take into account the fact that it is the parties, rather than the court, who have a full grasp of the nuances and the strengths and weaknesses of the case…Experience indicates that in the majority of situations questioning by counsel would be more likely to fulfill the need than an exclusive examination in general terms by the trial court.
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> More recently, records reviewed in this court reflect a new pattern by trial courts. The trial judge will explain the nature of the case in general terms, point out the parties and counsel, cover the most basic points of law (burden of proof, presumption of innocence, right to remain silent, etc.), explain the procedures and schedule to be followed and then turn the questioning over to trial counsel. We encourage this approach.

630 F.2d at 395 & n.8**.** *See also United States v. Corey*, 625 F.2d 704, 707 (5th Cir. 1980) ("This court has previously stressed that voir dire examination not conducted by counsel has little meaning.").

Of equal import is the requirement that the trial judge be, and appear to be, neutral. Jurors look to the judge as the ultimate authority figure. Social science research and the experiences of trial attorneys reflect that jurors are less likely to be fully candid and complete when responding to questions from a judge as opposed to those from an attorney. *See* David Suggs & Bruce D. Sales, *Juror Self-Disclosure in the Voir Dire: A Social Science Analysis*, 50 IND. L.J. 245, 253-58 (1981) (the difference in power structure enables attorneys to obtain more or different information from jurors than judges can elicit); Dale W. Broeder, *Voir Dire Examinations: An Empirical Study*, 38 S. Cal. L. Rev. 503, 506, 513 (1965).

As the U.S. Supreme Court has noted, the influence of the trial judge on the jury "is necessarily and properly of great weight" and "his lightest word or intimation is received with deference and may prove controlling." *Quercia v. United States*, 289 U.S. 466, 470 (1933) (*quoting Starr v. United States*, 150 U.S. 614, 626 (1984)). The impact of a judge's perceived position can chill the searching inquiry to determine if a potential juror is properly seated on a jury. *See McGill v. Commonwealth*, 10 Va. App. 237, 242 (Va. Ct. App. 1990) ("When asked by the court, a suggestive question produces an even more unreliable response.")

The social sciences provide additional support for the proposition that attorney-conducted voir dire is essential to ensure a fair and impartial jury is selected in this case. Jurors are often intimidated by the judge and are more apt to give candid answers to attorneys. *See* Jones, *Judge Versus Attorney-Conducted Voir Dire*, 11 Law & Human Behavior 131, 143 (1987) (in experimental setting, jurors responded more candidly to attorney's questions than judge's). Attorney-conducted voir dire is a more effective tool for eliciting bias than questioning from the Court alone.

Moreover, "[a] general question directed to the entire group of prospective jurors is inadequate." *United States v. Giese*, 597 F.2d 1170, 1183 (9th Cir. 1979). Individual and sequestered voir dire is necessary here – particularly as to certain areas of questioning such as pretrial publicity and views about the events of January 6. *See United States v. Katallah*, 313 F. Supp. 3d 176, 194 (D.D.C. 2018) (to ensure the defendant received a fair trial "[t]he Court (and the parties) stressed this in jury selection, with the administration of a length questionnaire and individualized voir dire that attempted to surface such predispositions"); *United States v. North*, 713 F. Supp. 1444, 1444-45 (D.D.C. 1989) (after certain jurors were excused based upon answers to questionnaire, jurors underwent a searching inquiry conducted by the Court and counsel from both sides. This inquiry was conducted entirely on an individual basis, with each juror being questioned separately"); *Giese*, 597 F.2d at 1183 ("The district court should conduct a careful, individual examination of each prospective juror preferably out of the presence of other jurors").

In high-profile and high-publicity cases federal courts regularly approve and utilize attorney-conducted voir dire and individual, sequestered questioning of jurors. *See, e.g., United States v. Skilling*, 561 U.S. 358, 389 (2010) (using extensive jury questionnaire and follow-up voir dire about publicity with individual, sequestered jurors); *United States v. Jones*, 566 F.3d 353, 358 (3rd Cir. 2009) (selection process included detailed questionnaire and "the attorneys were deeply involved in the process of questioning jurors," with many dismissed for cause given bias towards gangs); *United States v. McVeigh*, 153 F.3d 1166, 1184 (10th Cir. 1998) (extended questionnaire and "each of the seated jurors was individually questioned about his or her ability to set aside the effects that any exposure to pretrial publicity may have had"); *United States v. Maldonado-Rivera*, 922 F.2d 934, 971 (2d Cir. 1990) (written questionnaire and defense counsel

individually questioned prospective jurors); *United States v. Affleck*, 776 F.2d 1451, 1455 (10th Cir. 1985 (questionnaire and voir dire conducted by court and counsel); *United States v. Wittig*, 2005 WL 758605 at *1 (D. Kan. April 4, 2005) (juror questionnaires and individualized, sequestered voir dire); *Untied States v. Felton*, 239 F. Supp. 2d 122, 125 (D. Mass. 2003) (potential jurors completed lengthy questionnaire); *United States v. Houlihan*, 926 F. Supp. 14, 16 (D. Mass. 1996) (questionnaire and attorney-conducted, individualized voir dire of jurors); *Untied States v. Helmsley*, 733 F. Supp. 600, 610 & n.8. (S.D.N.Y. 1989) (prospective jurors completed "comprehensive juror questionnaires" and individual follow-up questions based in part on the prospective juror's answers on questionnaire).

While the government may argue that Mr. Celentano's specific case has not received as much media attention as the above listed cases or as some of the other January 6 cases,[3] it is impossible to ignore the pervasiveness of the publicity and attention around the events of January 6. The discourse surrounding people who are alleged to have participated in the events of that day focuses on group culpability by using terms such as "rioters" and "mob." While Mr. Celentano's case may not be the most publicized case, his trial will be one of the infamous "January 6" cases. He is accused of assaulting a Capitol Police Officer, and of attacking Democracy by attempting to interfere with the transition of power. Capitol Police Officers have been heralded as heroes in the media. This is not a typical case, and thus, typical voir dire procedures are inadequate. Accordingly, this Court should permit extended attorney-conducted, individualized, and sequestered voir dire of the potential jurors.

[3] The allegations against Mr. Celentano have been publicized in several mainstream media sources. *See e.g.* Michael Levenson, *Man Charged With Pushing a Capitol Police Officer Over a Ledge on Jan. 6.* The New York Times, March 10, 2022, https://www.nytimes.com/2022/03/10/us/ralph-joseph-celentano-jan-6.html; Dia Gill, *Capitol Rioter Accused of Shoving Cop is Outed by a Turtle Charity*, The Daily Beast, March 9, 2022, https://www.thedailybeast.com/ralph-joseph-celentano-capitol-rioter-who-pushed-cop-off-ledge-arrested; Ryan J. Reilly, *FBI arrests Trump supporter alleged to have "blind-sided" Capitol cop on Jan. 6*, NBC News, March 9, 2022, https://www.nbcnews.com/politics/trump-supporter-blind-sided-capitol-cop-jan-6-arrested-fbi-rcna19330.

WHEREFORE, Mr. Celentano respectfully moves this Court to order that voir dire will consist of attorney-conducted, individual, and sequestered examination of the potential jurors.

Respectfully submitted,

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