

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA	:	:
	:	:
v.	:	No.: 21-cr-623 (CRC)
	:	:
KIRSTYN NIEMELA,	:	:
	:	:
Defendant.	:	:
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**JOINT PROPOSED VOIR DIRE**

Pursuant to this Court’s Minute Order on November 23, 2022, the parties hereby submit the attached proposed *voir dire*.

FOR THE DEFENDANT

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Respectfully submitted,

FOR THE UNITED STATES

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1 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

: UNITED STATES OF AMERICA:: v.: No.: 21-cr-623 (CRC):

KIRSTYN NIEMELA,:: Defendant.:

: JOINT PROPOSED VOIR

DIRE Pursuant to this Court's Minute Order on November 23, 2021, the parties hereby submit the attached proposed voir dire. Respectfully submitted, FOR THE DEFENDANT FOR THE UNITED STATES By: /s/ Paul J. Garrity MATTHEW M. GRAVES Paul Garrity United States Attorney NH Bar No. 905 D.C. Bar No. 481052 14

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COURT FOR THE DISTRICT OF COLUMBIA : No.: 21-cr-623 (CRC): UNITED STATES

OF AMERICA:: v.: No.: 21-cr-623 (CRC): KIRSTYN NIEMELA,:: Defendant.:

: PROPOSED VOIR DIRE QUESTIONS A. Proposed Group Voir

Dire Questions General Questions 1. Do you have any difficulty reading, speaking, or understanding English? 2.

Do you have any trouble seeing or hearing? 3. Do you have difficulty sitting and focusing for several hours at a

time? 4. Do you have any other physical or mental issue that would make it difficult for you to serve as a juror?

Knowledge of the Participants 5. This is a criminal case entitled United States v. Kirstyn Niemela, 21-cr-623. The

defendant is charged with four offenses in connection with the events that occurred at the U.S. Capitol on

January 6, 2021. Do you know or have you heard anything about this specific case? 6. The Government in this

case is represented by AUSA Mike Gordon and Trial Attorney Jessica Arco, along with paralegal Tekiah Jones.

Defendant Kirstyn Niemela is represented by Paul Garrity and Rick Monteith. The defendant is a resident of

Hudson, NH. [Have each stand while being introduced.] Do you know any of these people? 2 1 7. [Each side will

introduce its witnesses by name, general area of residence, and employment.] Do you know any of the witnesses

who have been introduced to you? 8. [Introduce courtroom personnel.] Do you know or are you acquainted with

any of these individuals? 9. There are many people on this jury panel. Do you recognize another member

of the panel as being a relative, close friend, or associate? Questions Applicable to Self, Family Members, and

Close Personal Friends The next several questions relate to you, family members, and close personal friends:

10. Does anyone in that group now work for, or has anyone in that group ever worked for, any law-enforcement

agency? This includes any police department in or outside the District, special police officers, prosecutors' offices

such as the state's attorney or U.S. Attorney, Park Police, FBI, Dept. of Justice, Homeland Security, sheriffs'

departments, Secret Service, or any other law-enforcement agency. 11. Does any member of that group work for

the legislative branch of the United States? 12. Has any member of that group ever gone to law school, worked

as a lawyer, worked as a paralegal or otherwise worked in a law office or had legal training? 13. Has anyone in

this group ever attended law school, worked as a lawyer, worked as a paralegal, or otherwise worked in a law

office or had legal training? Have any members of your immediate family or close personal friends done so? 14.

Does any member of that group live or work in or near the U.S. Capitol? What about on January 6, 2021? 15.

Was any member of that group affected by the events at the U.S. Capitol on January 6, 2021, or the response? 3

1 16. Does any member of that group have any personal or professional connection to the events at the U.S.

Capitol on January 6, 2021? Publicity and Predisposition Due to Nature of Case 17. Have you followed the news

about the events that took place at the U.S. Capitol on January 6, 2021? a. If yes, would you describe yourself as

having closely followed the news related to the events at the U.S. Capitol on January 6, 2021? 18. Have you

ever watched video of what happened at the U.S. Capitol on January 6, 2021 on the news or on the Internet? a.

If yes, will you have any difficulty putting aside any opinions you may have formed about the people involved in

those events, following the law as I explain it to you, and deciding the case in a fair and impartial manner based

solely on the evidence presented in court? 19. A House Select Committee held televised hearings concerning the

events at the U.S. Capitol on January 6, 2021. Did you watch any of those hearings? a. If yes, will you have any

difficulty putting aside any opinions you may have formed about the people involved in those events, following

the law as I explain it to you, and deciding the case in a fair and impartial manner based solely on the evidence

presented in court? 20. The House Select Committee has also issued a final report regarding their investigation

and has held a hearing regarding that final report. Did any of you hear, read, or watch a news report related to that

final report or hearing? Did any of you watch the hearing regarding the final report? 4 1 a. If yes, will you have

any difficulty putting aside any opinions you may have formed about the people involved in those events,

following the law as I explain it to you, and deciding the case in a fair and impartial manner based solely on the

evidence presented in court? 21. Have you donated or contributed to funds related to the events of January 6,

2021, or Capitol riot-related cases, such as funds to benefit law enforcement officers or criminal defendants? 22.

Some people have strong feelings – both positive and negative – about the events that occurred on January 6,

2021. No matter what you have heard or seen about events at the U.S. Capitol on January 6, 2021, and any

opinions you might have formed about those events, would you have any difficulty setting your opinions aside and

deciding this case in a fair and impartial manner based solely on the evidence presented in court? 23. Do you

have any impressions or feelings, positive or negative, about how the Department of Justice has been handling

the criminal cases arising from the events at the U.S. Capitol on January 6, 2021, that would make it hard for you

to be a fair and impartial juror in this case? 24. Do you have any strong personal feelings or opinions about the

outcome of the 2020 presidential election, such that they would impact your ability to be fair and impartial in this

case? 25. Do any of you believe the 2020 presidential election was stolen, corrupt, or fraudulent? 26. Do you

have an opinion about people who believe that the 2020 presidential election was stolen, corrupt, or fraudulent

that would make it hard for you to serve as a fair and impartial juror in this case? 27. Do you consider yourself a

supporter of QAnon or believe in the theories advanced by its 5 1 supporters? 28. Do you have an opinion about

QAnon believers or supporters that would make it hard for you to serve as a fair and impartial juror in this case?

Legal Concepts 29. As you sit here, do you have an opinion about the defendant's guilt or innocence in this

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

KIRSTYN NIEMELA

A. Proposed Group Voir Dire Questions

General Questions

Knowledge of the Participants

Court and has held a hearing regarding that final report. Did any of you hear, read, or watch a news report related to that final report or hearing? Did any of you watch the hearing regarding the final report? 4 1 a. If yes, will you have any difficulty putting aside any opinions you may have formed about the people involved in those events, following the law as I explain it to you, and deciding the case in a fair and impartial manner based solely on the evidence presented in court? 21. Have you donated or contributed to funds related to the events of January 6, 2021, or Capitol riot-related cases, such as funds to benefit law enforcement officers or criminal defendants? 22. Some people have strong feelings – both positive and negative – about the events that occurred on January 6, 2021. No matter what you have heard or seen about events at the U.S. Capitol on January 6, 2021, and any opinions you might have formed about those events, would you have any difficulty setting your opinions aside and deciding this case in a fair and impartial manner based solely on the evidence presented in court? 23. Do you have any impressions or feelings, positive or negative, about how the Department of Justice has been handling the criminal cases arising from the events at the U.S. Capitol on January 6, 2021, that would make it hard for you to be a fair and impartial juror in this case? 24. Do you have any strong personal feelings or opinions about the outcome of the 2020 presidential election, such that they would impact your ability to be fair and impartial in this case? 25. Do any of you believe the 2020 presidential election was stolen, corrupt, or fraudulent? 26. Do you have an opinion about people who believe that the 2020 presidential election was stolen, corrupt, or fraudulent that would make it hard for you to serve as a fair and impartial juror in this case? 27. Do you consider yourself a supporter of QAnon or believe in the theories advanced by its 5 1 supporters? 28. Do you have an opinion about QAnon believers or supporters that would make it hard for you to serve as a fair and impartial juror in this case? Legal Concepts 29. As you sit here, do you have an opinion about the defendant's guilt or innocence in this

Jessica Arco a paralegal and paralegal in joint representation with the defendant's legal counsel represented by Paul Gansy you might have formed about those events, would you have any difficulty setting your opinions aside and deciding this case in a fair and impartial manner based solely on the evidence presented in court? 23. Do you have any impressions or feelings, positive or negative, about how the Department of Justice has been handling the criminal cases arising from the events at the U.S. Capitol on January 6, 2021, that would make it hard for you to be a fair and impartial juror in this case? 24. Do you have any strong personal feelings or opinions about the outcome of the 2020 presidential election, such that they would impact your ability to be fair and impartial in this case? 25. Do any of you believe the 2020 presidential election was stolen, corrupt, or fraudulent? 26. Do you have an opinion about people who believe that the 2020 presidential election was stolen, corrupt, or fraudulent that would make it hard for you to serve as a fair and impartial juror in this case? 27. Do you consider yourself a supporter of QAnon or believe in the theories advanced by its 5 1 supporters? 28. Do you have an opinion about QAnon believers or supporters that would make it hard for you to serve as a fair and impartial juror in this case? Legal Concepts 29. As you sit here, do you have an opinion about the defendant's guilt or innocence in this

case? 30. The burden of proof and never shifts to the defendant. The defendant is presumed innocent unless the government meets that burden, and she has no obligation to offer her own defense. Would anyone have any difficulty or hesitation with respecting this allocation of the burden of proof? 31. The government is not required to prove its case to a mathematical certainty or prove guilt beyond all doubt. Would anyone of you require proof to a mathematical certainty or prove guilt beyond all doubt? 32. All defendants have a constitutional right not to testify, and if Ms. Niemela decides not to testify, I will instruct you that you cannot hold her silence against her in any way. Would you have any difficulty following that instruction? 33. Jurors are the sole judges of the facts. However, the jury must follow the principles of law as instructed by the judge. The jury may not follow some rules of law and ignore others. Even if the jury disagrees or dislikes the rules of law or does not understand the reasons for some of the rules, it is their duty to follow them. Do you have any personal beliefs that would make it difficult to follow the Court's legal instructions, whatever they may be? 6 1 34. If you are selected as a juror in this case, I will instruct you to avoid all media coverage, including radio, television, podcasts, and social media, and not to use the internet with regard to this case for any purpose. That is, you will be forbidden from reading newspaper articles about this case, listening to radio and podcast stories about this case, watching TV news about this case, googling this case, blogging or tweeting about this case, or reading or posting comments about this case on any social media sites. Do you have any reservations or concerns about your ability or willingness to follow this instruction? 35. Under certain circumstances, the government can obtain authorization from a judge to search, for example, a cell phone or social media account, to obtain evidence including, but not limited to, emails, text messages, video recordings, letters, financial information and other materials or information. I will instruct you that any evidence that is presented to you at trial was obtained legally and you can consider it. Do you have concerns about your ability to follow this instruction? Relationship with the Government and Criminal Justice System 36. Have you had any unpleasant experiences with the police, a prosecutor, or other law enforcement officer, whether here in D.C. or elsewhere, that would make it difficult for you to be a fair juror in this trial? 37. Have you had any unpleasant experiences with a defense attorney or defense investigator, whether here in D.C. or elsewhere, that would make it difficult for you to be a fair juror in this trial? 38. I will instruct the jury at the end of the trial that the testimony of a police officer should be treated the same as testimony from any other witness and that the jury should give neither greater nor lesser weight to the testimony of a witness simply because that witness is a police officer. Do you have such strong feelings or opinions about law enforcement officers, either positive or negative, that it would be difficult for you to be an impartial juror in a case involving testimony from law enforcement officers? 39. Have you, a family member or friend ever been arrested for, convicted of, or charged with a crime, other than traffic or parking violations? a. If yes, do you believe the justice system treated you (or your family member or friend) fairly? b. Was there anything about the experience that you believe makes you unable to be fair and impartial as a juror in this case? 40. Have you, a family member or friend been a victim of or witness to a crime? a. Was there anything about the experience that you believe makes you unable to be fair and impartial as a juror in this case? Prior Juror Service and Experience with Court System 41. Have you, a family member or friend ever served as a grand juror or as a juror in a civil or criminal trial? b. In that trial, did the jury reach a verdict? Were you the foreperson? 42. If you served as a grand juror or juror, was there anything about the experience that you believe makes you unable to be fair and impartial as a juror in this case? Other Law-Enforcement Agency 43. Have you, a family member or friend ever worked for any law-enforcement agency? This includes any police department in or outside the District of Columbia, including special police officers, prosecutors, offices such as the state's attorney or U.S. Attorney, Park Police, D.C. Department of Justice, a member of a grand jury or as a juror in a previous trial? 44. Have you, a family member or friend ever worked for the legislative branch of the United States? 45. Have you, a family member or friend ever worked as a lawyer, worked as a paralegal or otherwise worked in a law office or had legal training? 46. Has anyone in this group ever attended law school, worked as a lawyer, worked as a paralegal, or otherwise worked in a law office or had legal training? Have any members of your immediate family or close personal friends done so? 47. Does any member of that group live or work in or near the U.S. Capitol? What about on January 6, 2021? 48. Was any member of that group affected by the events at the U.S. Capitol on January 6, 2021, or the response?

11. Does any member of that group work for the legislative branch of the United States?
12. Has any member of that group ever gone to law school, worked as a lawyer, worked as a paralegal or otherwise worked in a law office or had legal training?
13. Has anyone in this group ever attended law school, worked as a lawyer, worked as a paralegal, or otherwise worked in a law office or had legal training? Have any members of your immediate family or close personal friends done so?
14. Does any member of that group live or work in or near the U.S. Capitol? What about on January 6, 2021?
15. Was any member of that group affected by the events at the U.S. Capitol on January 6, 2021, or the response?

16. Does any member of that group have any personal or professional connection to the events at the U.S. Capitol on January 6, 2021?

Publicity and Predisposition Due to Nature of Case

17. Have you followed the news about the events that took place at the U.S. Capitol on January 6, 2021?

- a. If yes, would you describe yourself as having *closely* followed the news related to the events at the U.S. Capitol on January 6, 2021?

18. Have you ever watched video of what happened at the U.S. Capitol on January 6, 2021 on the news or on the Internet?

- a. If yes, will you have any difficulty putting aside any opinions you may have formed about the people involved in those events, following the law as I explain it to you, and deciding the case in a fair and impartial manner based solely on the evidence presented in court?

19. A House Select Committee held televised hearings concerning the events at the U.S. Capitol on January 6, 2021. Did you watch any of those hearings?

- a. If yes, will you have any difficulty putting aside any opinions you may have formed about the people involved in those events, following the law as I explain it to you, and deciding the case in a fair and impartial manner based solely on the evidence presented in court?

20. The House Select Committee has also issued a final report regarding their investigation and has held a hearing regarding that final report. Did any of you hear, read or watch news reports related to that final report or hearing? Did any of you watch the hearing regarding the final report?



- a. If yes, will you have any difficulty putting aside any opinions you may have formed about the people involved in those events, following the law as I explain it to you, and deciding the case in a fair and impartial manner based solely on the evidence presented in court?

21. Have you donated or contributed to funds related to the events of January 6, 2021, or Capitol riot-related cases, such as funds to benefit law enforcement officers or criminal defendants?

22. Some people have strong feelings – both positive and negative – about the events that occurred on January 6, 2021. No matter what you have heard or seen about events at the U.S. Capitol on January 6, 2021, and any opinions you might have formed about those events, would you have any difficulty setting your opinions aside and deciding this case in a fair and impartial manner based solely on the evidence presented in court?

23. Do you have any impressions or feelings, positive or negative, about how the Department of Justice has been handling the criminal cases arising from the events at the U.S. Capitol on January 6, 2021, that would make it hard for you to be a fair and impartial juror in this case?

24. Do you have any strong personal feelings or opinions about the outcome of the 2020 presidential election, such that they would impact your ability to be fair and impartial in this case?

25. Do any of you believe the 2020 presidential election was stolen, corrupt, or fraudulent?

26. Do you have an opinion about people who believe that the 2020 presidential election was stolen, corrupt, or fraudulent that would make it hard for you to serve as a fair and impartial juror in this case?

27. Do you consider yourself a supporter of QAnon or believe in the theories advanced by its

supporters?

28. Do you have an opinion about QAnon believers or supporters that would make it hard for you to serve as a fair and impartial juror in this case?

Legal Concepts

29. As you sit here, do you have an opinion about the defendant's guilt or innocence in this case?

30. The burden of proof, as in all criminal cases, is proof beyond a reasonable doubt, and this burden rests on the government and never shifts to the defendant. The defendant is presumed innocent unless the government meets that burden, and she has no obligation to offer her own defense. Would anyone have any difficulty or hesitation with respecting this allocation of the burden of proof?

31. The government is not required to prove its case to a mathematical certainty or prove guilt beyond all doubt. Would anyone of you require proof to a mathematical certainty or prove guilt beyond all doubt?

32. All defendants have a constitutional right not to testify, and if Ms. Niemela decides not to testify, I will instruct you that you cannot hold her silence against her in any way. Would you have any difficulty following that instruction?

33. Jurors are the sole judges of the facts. However, the jury must follow the principles of law as instructed by the judge. The jury may not follow some rules of law and ignore others. Even if the jury disagrees or dislikes the rules of law or does not understand the reasons for some of the rules, it is their duty to follow them. Do you have any personal beliefs that would make it difficult to follow the Court's legal instructions, whatever they may be?

34. If you are selected as a juror in this case, I will instruct you to avoid all media coverage, including radio, television, podcasts, and social media, and not to use the internet with regard to this case for any purpose. That is, you will be forbidden from reading newspaper articles about this case, listening to radio and podcast stories about this case, watching TV news about this case, googling this case, blogging or tweeting about this case, or reading or posting comments about this case on any social media sites. Do you have any reservations or concerns about your ability or willingness to follow this instruction?

35. Under certain circumstances, the government can obtain authorization from a judge to search, for example, a cell phone or social media account, to obtain evidence including, but not limited to, emails, text messages, video recordings, letters, financial information and other materials or information. I will instruct you that any evidence that is presented to you at trial was obtained legally and you can consider it. Do you have concerns about your ability to follow this instruction?

Relationship with the Government and Criminal Justice System

36. Have you had any unpleasant experiences with the police, a prosecutor, or other law enforcement officer, whether here in D.C. or elsewhere, that would make it difficult for you to be a fair juror in this trial?

37. Have you had any unpleasant experiences with a defense attorney or defense investigator, whether here in D.C. or elsewhere, that would make it difficult for you to be a fair juror in this trial?

38. I will instruct the jury at the end of the trial that the testimony of a police officer should be treated the same as testimony from any other witness and that the jury should give neither greater nor lesser weight to the testimony of a witness simply because that witness is a police

officer. Do you have such strong feelings or opinions about law enforcement officers, either positive or negative, that it would be difficult for you to be an impartial juror in a case involving testimony from law enforcement officers?

39. Have you, a family member or friend ever been arrested for, convicted of, or charged with a crime, other than traffic or parking violations?

- a. If yes, do you believe the justice system treated you (or your family member or friend) fairly?
- b. Was there anything about the experience that you believe makes you unable to be fair and impartial as a juror in this case?

40. Have you, a family member or friend been a victim of or witness to a crime?

- a. Was there anything about the experience that you believe makes you unable to be fair and impartial as a juror in this case?

Prior Juror Service and Experience with Court System

41. Have you had an experience as a member of a grand jury or as a juror in a previous trial?

- a. If you served as a juror, was it a civil or criminal trial?
- b. In that trial, did the jury reach a verdict? Were you the foreperson?

42. If you served as a grand juror or juror, was there anything about the experience that you believe makes you unable to be fair and impartial as a juror in this case?

43. Have you ever appeared as a witness in either state or federal court?

- a. If yes, was there anything about the experience that you believe makes you unable to be fair and impartial as a juror in this case?

44. Have you ever filed a lawsuit, or had a lawsuit of any kind filed against you, by anyone in state or federal court?



- a. If yes, was there anything about the experience that you believe makes you unable to be fair and impartial as a juror in this case?

Role of the Court and Final Questions

45. If, after considering all of the evidence and my instructions on the law, you find the defendant guilty of one or more counts in the indictment, it will be my job as the judge and my job alone to determine the punishment. The law does not permit you to consider the issue of punishment because there are factors, having nothing to do with this trial, which will help me determine the appropriate sentence, if any. Would you have difficulty or would you be uncomfortable serving as a juror knowing that you will not have any say in any fine, restitution, or jail sentence that I may impose?

46. (Describe the Courtroom COVID-19 protocols, such as plexiglass, masks, and spacing, if any.) Would any of you be uncomfortable serving as a juror with these safety protocols in place?

47. Do you have a health or physical problem that would make it difficult to serve on this jury?

48. Is there any other reason that would make it difficult for you to sit as a juror in this case? Perhaps you have a religious, moral, or philosophical reason that you believe would make it hard for you to be fair. In sum, is there some other reason that would make it difficult for you to sit as a fair, impartial, and attentive juror in this particular case?

49. To reach a verdict on a particular charge, every juror must agree on the verdict. That is, any verdict must be unanimous. In deliberations you must consider the opinions and points of your fellow jurors, but you must also follow your own conscience and be personally satisfied with any verdict. Would you have difficulty expressing your own opinions and thoughts about this case to your fellow jurors?

50. Today is Monday, January 23. We expect the presentation of evidence in this case to conclude by Wednesday of this week. You will likely hear evidence in the case from 9:30 am to 5:00 pm each day, with a lunch break from 12:30 pm to 1:45 pm each day. After the close of evidence, the jury will deliberate until it reaches a decision. Once you begin deliberating, I do not know how long your deliberations will last. That is up to the jurors. But you will not meet past 5:00 pm, and you will not meet on weekends. Would serving as a juror in this case be an extreme hardship to you? And by this this, I mean extreme. Serving on a jury is often inconvenient. What I am asking is whether serving on this jury would be very difficult to you.

51. My final question is a catch-all question. Is there any other reason that I have not asked about that would make you unable to sit fairly, impartially, and attentively as a juror in this case?

#### **B. Individual *Voir Dire* by the Court**

After the Court reads the above questions to the full venire, the United States respectfully requests that the Court conduct individual *voir dire* for two purposes: (1) to follow up on any “yes” answers by a juror, and (2) to obtain a limited amount of background information about every juror, including those who did not answer “yes” to any of the above questions. The United States requests that the Court ask each juror the background questions detailed below and generally follow up on any “yes” responses to the group *voir dire* questions in Section A as necessary to determine whether the juror could be fair and impartial in this case.

##### Background Questions for All Jurors

1. What is the highest level of school you completed?
2. How long have you lived in the District of Columbia?
3. What is your current occupation, if any?

- a. How long have you been at this job?
  - b. What are your job responsibilities?
  - c. Are you responsible for hiring, firing, or supervising anyone?
4. Are you married or do you otherwise have a long-term partner?
    - a. If yes, what is your spouse or partner's occupation?
  5. Do you have children or step-children?
    - a. If yes, how many and what are their ages?
  6. If any of your children or step-children are adults, what are their occupations?

**C. Attorney-Conducted Follow-Up Questions**

The United States respectfully requests that, following the Court's individual *voir dire*, each party be permitted to ask additional pertinent follow-up questions of the prospective juror.