

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
) Criminal No. 19-431 (PAD)
 JULIA BEATRICE KELEHER, et.al.,)
)
 Defendant.)
)
)
 _____)

DEFENDANTS' JOINT MOTION FOR CHANGE OF VENUE

INTRODUCTION

In July 2019, Defendants Julia Beatrice Keleher, Angela Avila-Marrero, Alberto Velazquez-Pinol, Fernando Scherrer-Caillet, Glenda E. Ponce-Mendoza, and Mayra Ponce-Mendoza (“Defendants”) were named in a highly publicized indictment in Puerto Rico (the “Indictment”) for alleged public corruption. *See* ECF No. 3. The publicity and its results were no accident. The U.S. Attorney and FBI arranged for and conducted an hour long televised press conference in Spanish to announce the charges despite the presumption of innocence and obvious knowledge that such a conference would create a groundswell of antipathy.¹ The group chats involving Governor Ricardo Rosselló that went public that same day, and sparked “the worst political crisis in modern Puerto Rico’s history,”² only amplified that negative publicity.

The dramatic political crisis that dominated the summer of 2019 in Puerto Rico (el “Verano del 19”), which culminated in a grass-roots movement that has unseated two governors, continues to dominate the airwaves.³ Defendants have been lumped in with that crisis—as the public views them as part of Governor Rosselló’s circle of corruption and, thus, guilty by association. The extensive publicity about this case, coming from multiple sources including television, newspaper, radio, the internet, and word-of-mouth, has been relentless, and the public outcry against Defendants has continued well-past the Governor’s resignation. As some indication of the special circumstances of this case, there have been hundreds of articles, stories, and editorials that report

¹ Media Ex. 1 (Video of press conference published by WAPA-TV); *see also* Media Exs. 2-4 (coverage and reactions to the Indictment). Video and radio exhibits are being filed by providing a copy of an original DVD to the Clerk’s Office so that the same can be forwarded to this Court.

² “At Puerto Rico protests, Ricky Martin and Bad Bunny joined the ‘Ricky renuncia’ fight. Here’s why,” July 22, 2019, <https://www.nbcnews.com/think/opinion/puerto-rico-protests-ricky-martin-bad-bunny-joined-ricky-renuncia-nca1032321> (Appendix A, Ex. 62)

³ *See, e.g.*, Media Ex. 6 (Video published by the Intercept, titled “Scenes from the protest in Puerto Rico.” Because the defense is not asking the Court to consider the audio, the words spoken by protesters in the video have not been translated to English.).

on this case and condemn the Defendants. *See* Appendix A (collection of news articles covering this case and the protests). The volume of negative publicity coupled with the charged political atmosphere has created considerable widespread bias against Defendants.

In fact, a venue study specifically commissioned to investigate the extent and impact of pre-trial publicity in this case⁴ estimates that nearly *two-thirds of the jury pool in Puerto Rico both recall the case and presume Defendants are guilty*. Decl. ¶¶ 31(c), 33(a). The study also provides evidence that the extensive pre-trial publicity surrounding this case has led to an unusual intensity of anger in Puerto Rico towards the Defendants—anger that has solidified the prejudice beyond repair. Indeed, the study found that 68.8% of those in Puerto Rico familiar with the case reported “a lot” of anger or hostility existing in their community towards Defendants, in part because prospective jurors see Defendants’ conduct as having directly adversely affected the education and Medicare systems in Puerto Rico. *Id.* ¶ 34(b). If the Court needs any proof of this anger, it need only review the video of Defendant Keleher’s first court appearance in Puerto Rico,⁵ where Defendant and her counsel were assaulted when trying to get to court. Because the “pervasive pretrial publicity has inflamed passions in the host community past the breaking point,” Defendants cannot expect a fair trial in Puerto Rico and “jury prejudice should be presumed.” *United States v. Quiles–Olivo*, 684 F.3d 177, 182 (1st Cir. 2012). Defendants therefore request that the Court transfer this case to a sister district in the First Circuit.

To be sure, a presumption of prejudice will only arise in “the extreme case.” *Skilling v. United States*, 561 U.S. 358, 381 (2010). But this is such a case. The political crisis in Puerto

⁴ Dr. Arthur H. Patterson’s declaration summarizing the methodology of the venue study and its results (referred to herein as the “Declaration”) is attached to this Motion.

⁵ Media Ex. 5 (Video published by El Nuevo Dia titled “Así fue la dramática entrada de Julia Keleher al Tribunal Federal.” Because the defense is not asking the Court to consider the audio, the words spoken by protesters in the video have not been translated to English.)

Rico is unparalleled, leading the people of Puerto Rico to rise up in mass protests against a political Administration—the very Administration in which the government officials in this case served. Even individual jurors who could avoid such personal bias will undoubtedly feel the pressure to return the guilty verdict demanded by the communities in which they live. Thus, this case is the poster child of a jury pool pushed “past the breaking point.” Unlike more typical cases involving negative publicity, the ongoing inflammatory media coverage against Defendants cannot be addressed by means short of transfer.

Courts have not hesitated to transfer cases like this involving allegations of political corruption and persistent media coverage that associates and compares the case and defendants with other political scandals—particularly when this prejudicial discourse in the traditional media is accompanied by social media coverage and other forms of highly influential expression. *See, e.g., United States v. Casellas-Toro*, 807 F.3d 380, 387 (1st Cir. 2015); *United States v. Gordon*, 380 F. Supp. 2d 356 (D. Del. 2005), *rev’d on other grounds*, 183 F. App’x 202 359-60 (3d Cir. 2006). Moreover, the situation in Puerto Rico, which affects the highest levels of government, is unlikely to change before Defendants’ trial. To the contrary, this case (and public corruption in general) will be at the center of next year’s gubernatorial elections, exacerbating existing biases and re-familiarizing prospective jurors with this case on the eve of trial.

Even if there was some hope of neutralizing the jury bias, it would be impossible for the Court to avoid the appearance of unfairness or bias in the proceedings given the public nature of the case. Convictions under such circumstances would bear the appearance of bias, and acquittals would fuel public outrage directed at the judiciary.⁶ Courts have found that avoiding situations

⁶ *See e.g.*, Appendix B, Ex. 2 (August 21, 2019 public social media post following this Court’s reduction of Defendant Scherrer’s bail that begins with “another one that gets away with it” and is followed by 18 comments expressing similar views such as “[j]ustice has two faces: one to measure the rich and another for the poor” and “[t]his is justice in PR”).

like these, which might undermine judicial integrity and cloud the public's perception of the judicial process, justifies transferring cases "in the interest of justice." Fed. R. Crim. P. 21(b). This case should be transferred on that basis as well.

LEGAL STANDARDS

"The Sixth Amendment secures to criminal defendants the right to trial by an impartial jury." *Skilling*, 561 U.S. at 377. While, "[b]y constitutional design" a trial occurs in the State where the crimes are alleged to have been committed, a defendant may move to transfer the proceeding if "extraordinary local prejudice will prevent a fair trial." *Id.* at 377–78. To that end, Rule 21(a) provides that "[u]pon the defendant's motion, the court must transfer the proceeding against the defendant to another district court 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." Fed. R. Crim. P. 21(a).

Transfer of venue pursuant to Rule 21(a) is required "where there is an ever-prevalent risk that the level of prejudice permeating the trial setting is so dense that a defendant cannot possibly receive an impartial trial." *Quiles-Olivo*, 684 F.3d at 182. This prejudice may be established "where the facts show that jury prejudice should be presumed," such as cases "in which pervasive pretrial publicity has inflamed passions in the host community past the breaking point." *Id.* (prejudice is presumed "where publicity is both extensive and sensational in nature") (citations omitted); *United States v. Walker*, 665 F.3d 212, 223 (1st Cir. 2011).

"A court also may transfer a criminal case to another district 'for the convenience of the parties, any victim, and the witnesses, and in the interest of justice.'" *Walker*, 665 F.3d at 223. "Generally, venue change under Rule 21(b) may be warranted depending on a number of factors, the significance of which inevitability will vary depending on the facts of a given case." *Quiles-Olivo*, 684 F.3d at 184. Such factors include those that "could cause an objective reasonable

observer to second guess the impartiality and fairness of the proceedings.” *United States v. Wright*, 603 F. Supp. 2d 506, 508-09 (E.D.N.Y. 2009) (transferring a case under Rule 21(b) because the judiciary “is charged with ensuring that the public perceives its process to be impartial,” and though there was no actual showing of prejudice, the question was whether the trial “will appear objectively to be on an equal footing, fair and just”). Given the political situation and public rhetoric about this case—including the overt verbal and, in some cases, physical attacks that the public has made and continues to make against Defendants—an objective reasonable observer would be remiss not to second-guess the fairness of a trial in Puerto Rico.

ARGUMENT

I. JURY PREJUDICE SHOULD BE PRESUMED IN THIS CASE

There is no question that the recent political and corruption scandals in Puerto Rico have pushed Puerto Ricans “past the breaking point” such that prejudice should be presumed in this case. *Walker*, 665 F.3d at 223. Last summer, there were massive protests on the island, including a demonstration on July 22, 2019 in the capital city of San Juan, the home of this Court, that drew an estimated 1 million people—almost a third of the island’s total population—and forced the resignation of two governors.⁷ The Defendants in this case are associated with that Governor and the Indictment was one of the factors raised in protests that led to his resignation. These protests reflect the growing crisis of confidence in government institutions and political figures in Puerto Rico. It is likely that half the island’s population would be disqualified just by excluding protestors from the jury pool, even before asking jurors whether they shared the protestors’ passions even if they did not participate in demonstrations, whether their views were prejudiced by the protests, or whether their friends or family took part in the protests.

⁷ See, e.g., “As Puerto Rico Erupts in Protests and Governor Resigns, ‘La Junta’ Eyes More Power,” July 24, 2019, <https://theintercept.com/2019/07/24/puerto-rico-protests-ricardo-rossello-la-junta/> (Appendix A, Ex. 63).

The constant media coverage of current and past corruption, including that alleged in this Indictment, has saturated the island community so thoroughly with anger against Defendants that it manifests in its popular culture, and has made Defendants household names. As one article noted, “[c]ritics [have] mocked [Keleher] through numerous memes and a satirical Japanese-style cartoon. After her arrest, Los Rivera Destino, a Puerto Rican band, dedicated a rendition of one of its more popular songs, ‘Te Boté,’ to ‘corrupted politicians,’ naming Keleher and Rosselló.”⁸ Indeed, hundreds of articles, TV, and radio reports have been published over the past few months about this case, discussing Defendants by name, and tarnishing their reputation. *See, e.g.*, Appendix A. And in addition to these more conventional forums, public searches of Defendants’ names on popular social media websites like Facebook show that the local population is actively following the case developments, posting and sharing articles, mischaracterizing the facts, and expressing and instigating overt anger and bias through public comments that range from unfair to senselessly aggressive and obscene.⁹

The Supreme Court has identified several factors relevant to presuming prejudice, including “the size and characteristics of the community, the nature of the publicity, [and] the time between the media attention and the trial.” *Casellas-Toro*, 807 F.3d at 386 (1st Cir. 2015) (citing *Skilling*, 561 U.S. at 379).¹⁰ By these factors, prejudice here must be presumed.

⁸ “Complicated Crusader to Accused Federal Conspirator: Ex-Puerto Rico Education Secretary Julia Keleher’s ‘Surreal’ Journey,” August 20, 2019, <https://www.the74million.org/article/complicated-crusader-to-accused-federal-conspirator-ex-puerto-rico-education-secretary-julia-kelehers-surreal-journey/>.

⁹ *See* Appendix B (collection of social media posts about Defendants). Responses to the venue study confirm that potential jurors in Puerto Rico discuss the case on Facebook. *See, e.g.*, Decl. at ¶ 33(g)(iii) (“I read on Facebook that the former Secretary of Education was using the education funds to make illegal contracts for her benefit and her friend’s benefit.”).

¹⁰ The Supreme Court also considers “whether the jury’s decision indicated bias,” but that factor is not relevant here as a trial has not yet taken place. *Skilling*, 561 U.S. at 379.

A. Size and characteristic of the community.

Both the First Circuit and District of Puerto Rico recognize that “Puerto Rico is ‘a compact, insular community’ that is ‘highly susceptible to the impact of local media.’” *Casellas-Toro*, 807 F.3d at 386–87 (citing *United States v. Moreno Morales*, 815 F.2d 725, 734 (1st Cir. 1987); cf. *In re Tsarnaev*, 780 F.3d 14, 21 (1st Cir. 2015) (finding no prejudice, in part, because Boston is a “large, diverse metropolitan area”); *Skilling*, 561 U.S. at 384 (finding no prejudice, in part, because “Houston’s size and diversity diluted the media’s impact”).

B. Nature of the publicity.

Courts find that the nature of the publicity is likely to prejudice the jury where, for example, (1) “[t]he media reported rumors about [the defendant’s] character;” (2) “[t]he public t[akes] to Facebook and Twitter to publicly discuss [the] case;” (3) the allegations involve political corruption; and (4) the media coverage associates or draws parallels between the case and other incidents of a similar nature. See *Casellas-Toro*, 807 F.3d at 387; *Gordon*, 380 F. Supp. 2d 356 (political corruption case transferred because news and opinion poll “strongly support[ed] the view that a substantial percentage of Delawarians [were] likely to have concluded that the defendants were guilty as charged”); *United States v. Mazzei*, 400 F. Supp. 17, 20 (W.D. Pa. 1975) (perjury case against former state senator transferred because state-wide publicity was fueled “by accounts of related trials of other legislators or former legislators,” and that the defendant “remain[ed] a target of adverse editorial comment to the present”). This case shares all of those attributes: The statements made by the media about this case and Defendants go well beyond factual recitation, the public has taken to social media to publicly discuss the case, the allegations involve public corruption charges against high ranking government officials (*e.g.*, the former Secretary of

Education) in a charged political atmosphere, and the media continues to draw parallels between Defendants and other political figures and scandals (primarily, Governor Rosselló).

For example, a recent article covering this case highlights the fact that “[t]he charges helped bring down the administration of Gov. Ricardo Rosselló, who, although not implicated in the case, had appointed Keleher,” and that “[m]any of [Keleher’s] challenges stemmed from the tenure of previous education secretary Victor Fajardo, convicted in a massive corruption scandal with some parallels to the indictment against Keleher and her co-defendants.”¹¹ An exposé published in July 2019 put together a diagram showing links between Governor Rosselló and Elias Sanchez, on the one hand, and Defendants on the other.¹² Another article references Defendant Scherrer’s (and BDO’s) campaign contributions to Governor Rosselló.¹³ These kinds of associations and comparisons are particularly prejudicial at a time when the Puerto Rican community not only feels repeatedly betrayed by the government and views this as a time of reckoning against decades of corruption, but is also eager to “clean house.”

The extensive pre-trial media coverage has created a strong impression of guilt in Puerto Rico and otherwise inflamed the local community. For example, Defendant Keleher and her attorneys were ambushed by protestors and reporters when they appeared for a court appearance in Puerto Rico.¹⁴ And the very day Gov. Rosselló resigned, U.S. Rep. Raúl M. Grijalva (D-Ariz.)

¹¹ *See supra* n.8.

¹² “El saqueo a los fondos publicos detras del chat,” July 17, 2019, <http://periodismoinvestigativo.com/2019/07/el-saqueo-a-los-fondos-publicos-detras-del-chat/> (Appendix A, Ex. 53); *see also* Media Ex. 7 (LST Vivo program published by WAPA-TV discussing the diagram published by el Centro de Periodismo Investigativo).

¹³ “Socios de BDO organizaron eventos y fueron a actividades de recaudacion de Ricardo Rossello, September 12, 2019, <https://www.elnuevodia.com/noticias/locales/nota/sociosdebdoorganizaroneventosyfueroanaactividadesderecaudaciondericardorossello-2517323/>.

¹⁴ *See* Media Ex. 5; *see also* “Puerto Ricos Privatizers Are Finally Getting What They Deserve,” July 16, 2019, <https://jacobinmag.com/2019/07/julia-keleher-puerto-rico-schools> (community leader expresses happiness regarding Keleher’s arrest, noting that “she needs to go to jail, return the money she stole with interest, and give us our school back”) (Appendix A, Ex. 52).

and his colleague Nydia Velázquez (D-N.Y.) sent a letter to the Fiscal Oversight Management Board (FOMB) demanding it investigate BDO in light of the charges.¹⁵ The intensity of anger towards the Defendants in Puerto Rico and the impression of guilt are quite clear from the comments made by participants in the venue study commissioned to investigate the extent and impact of pre-trial publicity in this case. The responses by participants in Puerto Rico include:

- “[Keleher] embezzled millions and she was getting paid more than any other directors in Puerto Rico.”
- “*I feel angry, while students in Puerto Rico do not have a good education system, they come to steal the money of our kids.*”
- “This is shameful. These people were in positions to try to improve the educational system but instead *helped themselves to filling their pockets* and negatively affecting our children.”
- “The Puerto Rican political system has been so plagued with corruption in the past decades that *it does not surprise me that they are guilty.*”
- “I think *they are a bunch of crooks* and I don’t trust any local government officials. They are very corrupt individuals.”
- “*The whole scheme is reminiscent of the same things government officials have been accused of for years.* This contractors’ situation is not new, and the Department of education is no stranger to corruption. *I find the allegations quite credible.*”
- “It’s a constant situation in Puerto Rico. Constant corruptions.... *There is enough evidence that will show there has been corruption with this department....* This has been a constant crime. It’s been going on for so many years in Puerto Rico.”
- “This issue is not an isolated one. *For many years, people have suspected that Julia Keleher and her cohorts are corrupt.* In the past, she has been criticized for making suspicious purchases form [sic] private companies.”
- “*It is time to clean house* as the people of our country cleaned ‘La Fortaleza.’ They contracted Julia and failed. Now everybody is going to be alert about those kind of people. We are watching them.”

¹⁵ “Raúl Grijalva y Nydia Velázquez piden a la Junta de Supervisión investigar a BDO,” August 6, 2019, <https://www.elnuevodia.com/noticias/politica/nota/raulgrijalvaynydiavelazquezpidenalajuntadesupervisioninvestigar-abdo-2510207/> (Appendix A, Ex. 68).

Decl. ¶¶ 33(f)(x, xii, xiv-xv); 34(e)(ii-iii), (f)(v, vii-viii) (emphases added).

The responses above show that people in Puerto Rico have interpreted the extensive news coverage as suggestive of the existence of a kickback scheme—*despite the fact that the Indictment itself contains no such allegations*. The comments also show that the media coverage has led to a great deal of anger towards the Defendants based on the idea that they are part of widespread corruption existing in Puerto Rico’s government. Significantly, because of the gag order in place in this case (ECF. No. 17), Defendants are legally prohibited from publicly defending themselves from any of these accusations in Puerto Rico, making it difficult to offset this damaging one-sided dialogue. “[P]rejudice may properly be presumed [here] where prejudicial, inflammatory publicity about [this] case has so saturated the community from which [Defendants’] jury [would be] drawn as to render it virtually impossible to obtain an impartial jury.” *United States v. Angiulo*, 897 F.2d 1169, 1181 (1st Cir. 1990) (citations omitted).

C. Time between media attention and the trial.

The trial here is tentatively scheduled for May 2020, just *ten months* after the Indictment was issued and the massive protests of “el Verano del 19” took place. There is no indication that the “decibel level of media attention” has diminished, or is likely to diminish between now and trial. *See Casellas-Toro*, 807 F.3d at 388 (finding prejudice where “sensational publicity continued through the start of federal voir dire”); *cf. Skilling*, 561 U.S. at 383 (denying change of venue where “the decibel level of media attention diminished” in the four years following Enron’s collapse).

Notably, public outrage against the allegations in this case has only intensified since the Indictment was filed, showing no sign of slowing down. And widespread popular anger over political corruption has become a potent force in Puerto Rico. Indeed, since the Indictment, the

U.S. Attorney's Office in Puerto Rico has brought several additional high-profile corruption cases.¹⁶ Considering the frequency of media coverage and the fact that the trial has been scheduled in the middle of next summer's gubernatorial elections—which will bring this case back into the spotlight—it is unlikely that any existing prejudice will subside by the time of trial. *See Moreno Morales*, 815 F.2d at 730 (noting that case received “heightened attention” on the eve of trial because it was at the center of a “gubernatorial election” preceding the trial).

The venue study commissioned in this case confirms the impact that this widespread and extensive publicity concerning the Defendants' prosecution has had on the jury pool in Puerto Rico. The study revealed that roughly 85% of the jury pool in Puerto Rico is familiar with the case and that, of those familiar with the case, (i) 77% presume that defendants are guilty and (ii) 73% think there is “a substantial amount of evidence against defendants.” Decl. ¶ 33(b)(i), (d)(i). *This means that approximately 65.2% of the entire jury pool is both familiar with the case and presumes that defendants are guilty. Id.* ¶ 40. Notably, 62.5% of those participating in the venue study who were familiar with the case were able to name the former Puerto Rico Secretary of Education (who is a Defendant in this case) by name. Decl. ¶ 31(f). This statistic is “particularly striking and indicative of extensive exposure to pre-trial publicity as the question pertaining to this topic gave no prompts and required the individual to rely on free recall.” Decl. ¶ 31(f)(i).¹⁷ Also significant, 68.8% of those familiar with the case in Puerto Rico expressed “a lot” of anger or hostility towards the Defendants in this case, because the alleged criminal conduct was perceived as having hurt the education of children in Puerto Rico and the image of Puerto Rico. Decl. ¶

¹⁶ *See, e.g., U.S. v. Tribble et al.*, No. 3:19-cr-00541-FAB (D.P.R.); *U.S. v. Nazario-Quinones et al.*, No. 3:19-cr-00710-FAB (D.P.R.).

¹⁷ By contrast, in denying a venue change in *Skilling*, the Court noted that a survey of potential jurors commissioned by Skilling showed that “only 12.3% of Houstonians named him when asked to list Enron executives they believed guilty of crimes;” and “43% either had never heard of Skilling or stated that nothing came to mind when they heard his name.” 561 U.S. at 382 n.15.

34(b). And 67.5% of participants in the study had the pre-conceived notion that a person who served with former Governor Rosselló was more likely to commit a crime than other officials. Decl. ¶ 35(c). These results confirm the prejudgment and pervasive bias against Defendants in Puerto Rico.

This case is comparable to two other recent Puerto Rico cases, *Casellas-Toro* and *Moreno Moreno*. *Casellas-Toro* involved the son of a United State District Judge, who was accused of murdering his wife in Puerto Rico. 807 F.3d at 383-84. Immediately after the defendant's wife was murdered, the media began extensively covering the case. *Id.* at 383. The court concluded that the insular nature of the Puerto Rico community, the “[m]assive’ and ‘sensational’ publicity blanketing the community for two years before trial” revealed it to be “an extreme case” that warranted a change of venue. *Id.* at 386-88. In so holding, the First Circuit found it significant that *two-thirds of the potential jurors* admitted to disqualifying prejudice and were thus dismissed for cause from voir dire, and noted that such a high percentage was sufficient to presume bias of the rest of the venire. *Id.* at 389. The same is true here: the media coverage is sensational and prejudicial, public anger is overt and pervasive, and the venue study suggests that two-thirds of the potential jurors have a disqualifying prejudice.

In *Moreno Morales*, the media coverage of the infamous Cerro Maravilla shooting was continuous, and deemed by the trial judge “the media event of the year 1983-1984.” 815 F.2d at 730-31. That case involved the police shooting of two members of the Puerto Rico independence movement and allegations in the press and at televised hearings before Puerto Rico's Senate that the police officers had murdered the activists after they had been captured and fully subdued. *Id.* at 729. There, 25% of the jury venire admitted that they believed defendants were guilty of the charged crimes and essentially the entire venire admitted knowing about the crime at hand and the

subsequent legislative investigation. *Id.* at 735. Although no change of venue was requested in that case, the court noted that “[i]f an accused in a situation such as the present seeks a change of venue, judicial fairness may require that it be granted.” *Id.* at 737, 739 (“While we recognize the problems associated with a change in venue, it remains a feasible option for a Puerto Rico accused confronted with publicity at home.”). Given that this case shares all the attributes of *Moreno Marales*, but with a much higher proportion of potential jurors admitting to disqualifying prejudice and a more charged political atmosphere, a change of venue is even more imperative here.

The pretrial publicity about this case has rendered it impossible to empanel a fair and impartial jury in Puerto Rico. “[T]he danger here is not merely that some prospective jurors will deliberately hide their prejudices, but also that as ‘part of a community deeply hostile to the accused,’ seated jurors ‘may unwittingly be influenced’ by the fervor that surrounds them;” *i.e.*, there will be tremendous pressure on jurors to return a guilty verdict or themselves face scrutiny. *See Skilling*, 561 U.S. at 454 (“Prospective jurors’ personal interactions, moreover, may well have left them with the sense that the community was counting on a conviction.”) (Sotomayor, dissenting); *see also* Decl. ¶ 39 (explaining that the high proportion of Puerto Rico respondents to the survey who have talked about the case with others (57.9%) suggests “the possibility of seated jurors being inadvertently influenced by others during the course of everyday conversation”). Moreover, the very steps that the Court would need to take during voir dire to attempt to identify juror bias may only serve to exacerbate existing biases, as “questioning during voir dire would serve as a prompt to either familiarize, or refamiliarize, prospective jurors” with this case. Decl. ¶ 36(e)(i). These problems “are particularly daunting in light of the fact that the size of the jury pool will be limited by the federal jury requirement of English proficiency.” *Id.* ¶ 36(e)(ii).

For all of these reasons, the case should be transferred pursuant to Rule 21(a) so that Defendants may enjoy the fair trial and presumption of innocence to which they are entitled. Of the available options typically utilized by courts to remedy the effects of pretrial publicity, such as voir dire, a trial continuance, and instructions from the bench, only a venue transfer offers the Defendants a reasonable prospect of obtaining a fair trial here. Decl. ¶ 45(b).

II. TRANSFER IS ALSO IN THE INTEREST OF JUSTICE

“The Court must be mindful of the public’s perception of the judicial process and is charged with ensuring that the public perceives its process to be impartial.” *Wright*, 603 F. Supp. 2d at 508. Thus, the appearance of prejudice may justify transfer even where a presumption of prejudice under Rule 21(a) cannot be established. *Id.*

As noted above, it will be very difficult to find potential jurors in Puerto Rico who have not heard of Defendants or been exposed to the extensive media coverage of this case, including coverage linking Defendants and the conduct alleged to the culture of corruption that has run rampant in Puerto Rico for decades and that reached a boiling point this summer. Securing a fair trial by an unbiased jury is much easier to secure elsewhere, such as Massachusetts. To cite some of the venue survey results comparing responses of jury-eligible residents of Puerto Rico with jury-eligible residents from the District of Massachusetts, Boston Division that support this point:

	Familiar with the case	Familiar and presume Defendants’ guilt	Discussed the case with others
PR %	84.8	65.2	57.9
MABD %	34.7	22.1	9.6

Decl. ¶¶ 31(c), 32(b), 33(a) (percentages taken out of the entire sample).

The statistics in the last column are particularly striking, as they measure the salience of the case in the two jurisdictions, an important determinant of the need to change venue. To that point, it is

telling that, compared to the 68.8% of those familiar in the case in Puerto Rico who reported “a lot” of anger or hostility towards Defendants, only 13.3% of those familiar with the case in eastern Massachusetts reported such anger or hostility in their community. The question for purposes of Rule 21(b) is not whether Defendants could get a fair trial in Puerto Rico, but whether it “will appear objectively to be on an equal footing, fair and just.” *Wright*, 603 F. Supp. 2d at 508. Based on these numbers, the answer here is clearly no.

It is significant that this perception of impartiality can be avoided by simply moving the case to a sister court in the First Circuit, in contrast to other high-profile cases where transfer of venue was rejected for lack of an alternative. *Cf. Tsarnaev*, 780 F.3d at 16 (petitioner’s “own polling data shows that, in his preferred venue, Washington D.C., 96.5% of survey respondents had heard of the bombings at the Boston Marathon”). Defendants “would be relatively unknown outside Puerto Rico,” so “[w]hy strain to find a jury here which simply on paper says it can be fair but has such extensive knowledge of wrongdoing by the defendant that no one can say with certainty that they won’t be heavily influenced by that bias... and why not go somewhere else where nobody ever heard of [the defendant]?” *See Casellas-Toro*, 807 F.3d at 387-88.

Upon consideration of these circumstances, and to avoid any appearance of unfairness, Defendants respectfully urge the Court to transfer this case to a sister court in the First Circuit “in the interests of justice” under Fed. R. Crim. P. 21(b). *Wright*, 603 F. Supp. 2d at 509.

CONCLUSION

For all of the aforementioned reasons, Defendants respectfully request that the Court grant this motion and transfer the case to a different district in the First Circuit as doing so is the only way to ensure a fair trial.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on this 26 day of November, 2019.

WE HEREBY CERTIFY that on this date, we electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system, which will provide access to all parties of record.

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