

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

UNITED STATES OF AMERICA,
Plaintiff,

v.

JULIA BEATRICE KELEHER,
Defendant.

CRIMINAL CASE NO.: 19-431 (PAD)

**DEFENDANT JULIA BEATRICE KELEHER'S SUPPLEMENTAL MOTION IN
SUPPORT OF DEFENDANTS' JOINT MOTION FOR CHANGE OF VENUE**

COMES NOW the defendant, Julia Beatrice Keleher ("Keleher"), through her undersigned counsel, and respectfully files this motion in support of all Defendants' joint motion for a change of venue (Docket No. 172). In support of this motion, Keleher respectfully posits that it will be impossible for her to receive a fair trial in Puerto Rico due to the massive adverse and inflammatory publicity generated by the investigation and indictment in the case, particularly that directed at Keleher; the animosity generated by controversial decisions made by Keleher during her tenure as Secretary of the Department of Education; and the turbulent political environment permeating the Commonwealth of Puerto Rico.

I. Factual Background

On December 28, 2016, then-Governor of Puerto Rico, Ricardo Rossello, tapped Keleher to serve as the Secretary of Education of Puerto Rico ("Department"). Although initially unwilling to accept the proposal, she eventually accepted the position of Secretary notwithstanding the Department's well-documented history of incompetence and rampant corruption. Despite Keleher's obvious qualifications for the position, and the fact that she had been working in the Department for the better part of a decade prior to assuming the title of Secretary, public outcry

regarding Keleher's salary immediately clogged the airwaves.¹ Criticism poured in regarding Keleher's \$250,000.00 salary, a \$170,000.00 increase from the \$80,000.00 allotted by law for the person occupying the position. As early as February 2017, the president of the Federation of Teachers of Puerto Rico, Mercedes Martinez Padilla, stated that "[Keleher] will charge (*sic*) more than \$20,000 per month (\$125,000 for the first five months) for work that is part of her ministerial duties. If the secretary decides to keep this contract, she must resign from public office." *Id.* From there, the public vitriol towards Keleher would only worsen.

Around that time, Keleher was also thrust into the limelight and forced to defend Governor Rossello's stance against education regarding gender roles.² Despite Keleher's commitment to combating domestic violence, criticism continued to pour in long after the decision was made to eliminate gender role education, particularly from feminist sectors on the island who alleged the elimination of these courses in public schools would aggravate Puerto Rico's longstanding problem with violence against women.³

During Keleher's tenure at the helm of the Department, because of the dire fiscal situation plaguing Puerto Rico and the Department, the Department identified schools for closure as a cost-

¹ "Gobernador defiende paga a Keleher," February 14, 2017, https://www.elvocero.com/gobierno/agencias/gobernador-defiende-paga-a-keleher/article_42f65f23-f3ce-54b4-be61-e40a590508fb.html.

² *See, e.g.*, "Keleher se posiciona en contra de la perspectiva de genero en las escuelas," January 25, 2017, <http://www.indicepr.com/noticias/2017/01/25/news/67747/keleher-se-posiciona-en-contra-de-la-perspectiva-de-genero-en-las-escuelas/>; "Degenerada la perspectiva de genero?" January 26, 2017, <https://www.elnuevodia.com/opinion/columnas/degeneradalaperspectivadegenero-columna-2284734/>.

³ "Keleher afirma compromiso de Educación contra la violencia de genero," November 26, 2018, https://www.elvocero.com/educacion/keleher-afirma-compromiso-de-educaci-n-contra-la-violencia-de/article_022b6368-f1b7-11e8-b20b-e73451b26649.html.

saving measure and as a means to ensure that schools operated at a sustainable capacity.⁴ Ultimately, in two years, Keleher's Department directed the closure of anywhere between two-hundred fifty-five to four-hundred twenty-two public schools.⁵ Not surprisingly, this decision made Keleher the target of enormous public condemnation and personal hatred, as protests over the school closures followed Keleher in virtually every one of her public appearances after the announcements were made.⁶ In a protest led by Doctor Aida Díaz, President of the Teachers Association of Puerto Rico, the President of the Teachers Association of America, Randi Weingarten, told Puerto Rico-based digital news outlet, NotiCel, that the Department's closing of public schools was "a manmade disaster" which she dubbed "Hurricane Keleher."⁷

In addition to various protests, in an attempt to derail the decision to close public schools, individuals from both the private and public sectors filed motions for legal recourse in the local courts and demanded that the House of Representatives and the Senate of Puerto Rico investigate

⁴ "Departamento de Educación cerrará 184 escuelas," May 5, 2017, <https://www.primerahora.com/noticias/gobierno-politica/nota/departamentodeeducacioncerrara184escuelas-1222140/>.

⁵ See, e.g., "Keleher dice que no habrá más cierres de escuelas," October 25, 2018, <https://www.metro.pr/pr/noticias/2018/10/25/keleher-cierres-escuelas.html>; see also "Educación regala miles de libros que se utilizaban en las escuelas cerradas," August 20, 2019, <https://www.elnuevodia.com/noticias/locales/nota/educacionregalamilesdelibrosqueseutilizabanenlasescuelascerradas-2512858/>.

⁶ See, e.g., "Protestas por cierre de escuelas," December 30, 2018, <http://www.telemundopr.com/noticias/puerto-rico/Resumen-Cierre-de-escuelas-telemundo-puerto-rico-503531581.html> (stating that the decision to close schools provoked "dozens of protests"); "Convocan nueva manifestación contra cierre de escuelas," July 16, 2018, <https://www.metro.pr/pr/noticias/2018/07/16/convocan-nueva-manifestacion-cierre-escuelas.html>;

⁷ "Protestan el cierre de las escuelas por el 'huracán Keleher,'" April 25, 2018, <https://www.noticel.com/video/protestan-el-cierre-de-escuelas-por-el-huracan-keleher/734625773>. (NotiCel's video recorded interview with Randi Weingarten, President of the Teacher's Association of America, during April 2018 protest. Because Ms. Weingarten spoke in English, her words need not be translated.)

the Department's initiative.⁸ For many, the Department's decision to close schools violated Puerto Rican children's right to a public education.⁹ Journalist Sandra Rodriguez Cotto compared the school closures to the government's decision to store the unclaimed cadavers of dozen of victims of Hurricane Maria in refrigerated containers by blogging that: ". . . between the rise in crime, the new death toll after Maria, the global news of 'human trafficking sponsored by the government [of Puerto Rico],' and the fact that there are two types of storage trailers: where they put the dead and where Keleher wants to put public school students, this past week has been particularly hard [for Puerto Rico]."¹⁰

The public's condemnation of Keleher, however, was not limited to the issue of school closures and gender role education. Keleher was also heavily condemned for promoting a large-scale reform of the Department and of public education in Puerto Rico. To many, her introduction of charter schools into the island's education system was a slap in the face to the teacher's unions and to the quality of education.¹¹

⁸ See, e.g., "Presentaran un recurso legal para evitar el cierre de escuelas," April 26, 2018, <https://www.elnuevodia.com/noticias/locales/nota/presentaranunrecursolegalparaevitarelcierredeescuelas-2418004/>; "Presentan resoluciones para investigar el cierre de escuelas," April 25, 2018, <https://www.metro.pr/pr/noticias/2018/04/25/presentan-resoluciones-investigar-cierre-escuelas.html>; "Resolución del Senado paralizaría el cierre de escuelas," April 23, 2018, <https://www.elnuevodia.com/noticias/politica/nota/resoluciondelsenadoparalizariaelcierredeescuelas-2417047/>.

⁹ See, e.g., "Estudio determina violación de derechos a estudiantes del sistema publico," July 16, 2018, <https://www.primerahora.com/noticias/gobierno-politica/nota/estudioideterminaviolaciondederechosaestudiantesestudioideterminva-1>.

¹⁰ "Aquí manda la negra," August 12, 2018, <https://www.noticel.com/opiniones/blogs/en-blanco-y-negro-con-sandra/aqui-manda-la-negra/779819687>; See "Corpses Pile Up in Puerto Rico's Morgues," June 28, 2018, <https://www.bloomberg.com/news/articles/2018-06-28/backlogged-corpses-are-grim-testament-to-puerto-rico-s-challenge>.

¹¹ See, e.g., "Estudiante confronta a Keleher sobre la Reforma Educativa," March 2, 2018, <https://www.noticel.com/ahora/educacion/estudiante-confronta-a-keleher-sobre-reforma-educativa/710252453>; "Como quedo la reforma educativa," March 31, 2018, <https://www.noticel.com/ahora/educacion/cmo-qued-la-reforma-educativa/719427891>.

In February 2019, news broke that a warrant had been issued for Keleher's arrest.¹² The warrant stemmed from the Department's alleged non-compliance with an order to produce documents requested pursuant to an order entered in a wholly unrelated criminal indictment pending in the United States District Court for the District of Puerto Rico. However, news of the warrant with Keleher's name on it sent all news outlets in Puerto Rico into a frenzy. Political and media commentators called for her incarceration and celebrated the sullyng of Keleher's name. In an article published online by *El Nuevo Día*, the newspaper with the largest circulation in Puerto Rico, Keleher was couched as corrupt, a thief, and an embarrassment to Puerto Rico. She was compared to former Secretary of Education of Puerto Rico, Victor Fajardo, who was indicted and sentenced on corruption charges in 2002.¹³ Others voiced sentiment that her arrest was long overdue, considering Keleher's controversial tenure as Secretary of Education.

One month later, details about the federal investigation against Keleher leaked and the public fury against Keleher worsened. Many of the news reports were founded on little more than speculation, but the harm was immediate. In fact, many of the reports circled around "Tus Valores Cuentan," a program instituted by Keleher that was oft criticized for its high costs. No charges

¹² "Juez federal advierte a secretaria de Educación Julia Keleher que puede ser arrestada," February 13, 2019, https://www.notiuno.com/noticias/gobierno-y-politica/juez-federal-advierte-a-secretaria-de-eduaci-n-julia-keleher/article_2c18f53a-2fd5-11e9-a6d7-7bb68af7329f.html.

¹³ "Juez Federal exige a Educación que entregue documentos sobre una investigación," February 13, 2019, <https://www.elnuevodia.com/noticias/tribunales/nota/juezfederalexigeaeducacionqueentreguedocumentossobreunainjuezfederal-2476634/> (See comment made by username "LAB" which states: "... The people need to know more about these cases of corruption and those involved. The Department of Education, corruption brings back memories, right Victor Fajardo[?].").

were ever brought related to this contract. Nevertheless, the damage had been done and it would only get worse.¹⁴

News articles identified witnesses who had testified before the grand jury, identified subpoenas and search warrants issued as part of the investigation, and suggested that the federal authorities were investigating matters and contracts which bore no relation to the indictment that was eventually returned against her.¹⁵ The overwhelming public sentiment was one of vindication of Keleher detractors, who felt legitimized by the Federal investigation. The Teacher's Association of Puerto Rico voiced this sentiment in a widely publicized official statement: “[o]n many occasions and publicly we asked the governor and the presidents of the Senate and the House to question her because she clearly did not respect the laws, but they ignored it. We often pointed out the arbitrariness surrounding school closures, the million-dollar contracts she awarded, and her erratic actions, today the passage of time has proved us right.”¹⁶

On July 9, 2019, a Federal Grand Jury returned an indictment against Keleher and her co-defendants, charging her with conspiracy to commit wire fraud, in violation of 18 U.S.C. §1349; wire fraud, in violation of 18 U.S.C. §1343; and conspiracy to commit an offense against the United States (theft), in violation of 18 U.S.C. §§371, 641. *See* Docket No. 3. On July 10, 2019,

¹⁴ “The Puerto Rico-Josephson Scandal in Context,” June 8, 2018, <https://pasquines.us/2018/06/08/the-puerto-rico-josephson-institute-scandal-in-context/>; *see also* “Keleher y educacion en la mira federal,” April 3, 2019, https://www.elvocero.com/ley-y-orden/keleher-y-educaci-n-en-la-mira-federal/article_84268300-55b9-11e9-a5bd-df9c23f27825.html.

¹⁵ *See, e.g.*, “Keleher y Educación en la mira federal,” March 4, 2019, https://www.elvocero.com/ley-y-orden/keleher-y-educaci-n-en-la-mira-federal/article_84268300-55b9-11e9-a5bd-df9c23f27825.html; *see also* “Surgen más detalles sobre pesquisa a Keleher,” April 4, 2019, https://www.elvocero.com/ley-y-orden/surgen-m-s-detalles-sobre-pesquisa-a-keleher/article_9531473a-5685-11e9-8071-73d375a5df61.html.

¹⁶ “Asociación de Maestros: ‘el tiempo nos vuelve a dar la razón,’” July 10, 2019, <https://www.primerahora.com/noticias/puerto-rico/nota/asociaciondemaestroseltiemponosvuelveadardarlarazon-1351987/>.

the day following the return of the indictment, Keleher was arrested in Washington DC, her place of residence, and appeared before a Magistrate Judge for her initial appearance pursuant to the Federal Rules of Criminal Procedure. Keleher was released on her own recognizance and was ordered to report to the District of Puerto Rico for further proceedings.

News of Keleher's arrest immediately surfaced on all major news outlets of Puerto Rico, and local television shows and so-called political commentators rapidly used their platforms to comment on the arrest of Keleher and her co-defendants. Among them, Jay Fonseca, a renowned political commentator, who has over 1.5 million followers on his social media platforms, published a video on his Facebook page in which he stated that "several individuals, including Julia Keleher, were pressuring (*sic*) so that contracts be made (*sic*) and awarded to specific individuals to bypass federal regulations."¹⁷ The allegations of the indictment were presented as fact. A mere 24 hours after the public dissemination of the indictment, Fonseca assured his audience that "now we know how the management of federal funds in the Department took place and that is why Julia Keleher was arrested." *Id.* Public opinion quickly revealed itself in response to Fonseca's video. It was a celebration of Keleher's misfortune. Reckless news reports of this nature, laced with bias and devoid of any serious factual analysis, dominated media reports of Keleher's indictment, and purposefully confused allegations in the indictment with proven facts. It was as if Keleher had already been convicted without the benefit of a trial.

Similarly, local celebrities used their social media platforms to comment on the arrest of Keleher and her co-defendants. Among them was renowned comedian and television personality

¹⁷ Video published by Jay Fonseca on his Facebook page on July 10, 2019, <https://www.facebook.com/JayFonsecaPR/videos/912957752382417/> (Because the defense is asking the Court to consider the audio, the words spoken by Fonseca in Spanish have been translated to English.).

Jorge Pabón (commonly known as “El Molusco”). Pabon published a video in his Instagram page, where he has more than 1.4 million followers, in which he equated the arrest of Keleher and other co-defendants as a “copy paste” of the arrests made in 2000 during the corruption case involving former education secretary, Victor Fajardo.¹⁸ He also expressed personal hatred towards Keleher and her co-defendants, calling them “thieves,” “pigs,” and “motherfuckers,” calling for them to be put in prison, and hoping that “they rot in jail.” *Id.* Pabon’s audience celebrated the video and reiterated personal hatred towards Keleher and her co-defendants, further demonstrating that their opinions were not based on a reasoned analysis of the facts underlying the case, but rather a visceral loathing of Keleher and those connected with her due to her controversial tenure as Secretary of the Department. The indictment only served to heighten their animosity.

On July 16, 2019, the Defendant boarded a flight from Washington, DC to San Juan, Puerto Rico in the early morning hours. She was quickly identified by other passengers on the flight who sent word of Keleher’s impending arrival. While the flight was airborne, demonstrators congregated outside of the airport in San Juan to protest her arrival.¹⁹ Fearing for Keleher’s safety, airport security escorted her out of the airport through an alternate route, in order to avoid the commotion and possible risks of confrontation with the protesters who had gathered outside. Not

¹⁸ Video published by Jorge Pabón on his Instagram page on July 10, 2019, <https://www.instagram.com/tv/BzvDONAB2dq/>. (Because the defense is asking the Court to consider the audio, the words spoken by Pabon in Spanish have been translated to English.)

¹⁹ “Protestan en el aeropuerto: ‘Julia Keleher debe de estar en la cárcel federal,’” July 16, 2019, <https://www.elnuevodia.com/videos/protestanenelaeropuertojuliakeleherdebeestarenlacarcelfederal-video-256511/>. (Because the defense is not asking the Court to consider the audio, the words spoken by protesters in this video published by El Nuevo Día have not been translated to English).

surprisingly, media outlets quickly reported that Keleher was escorted from the airport, an event which they characterized as “preferential treatment” for Keleher.²⁰

Several hours later, Keleher arrived at the Federal Courthouse in Hato Rey for her initial appearance, arraignment, and detention hearing. She was immediately mobbed and assaulted by protestors who yelled epithets and insulted her.²¹ Many in the crowd celebrated her arrest and viewed it as “payback” for the Department’s school closures. Others accused her of being a thief. Some protestors displayed posters of a photoshopped image of a Keleher mug shot. During this volatile encounter, Keleher was struck in the stomach by an unknown protester and her hair was pulled as she attempted to enter the courthouse. The Federal Protective Service guards, and her own private security detail, were unable to control the crowds and protect Keleher’s safety. *Id.* Still, NotiCel characterized Keleher’s arrival to the federal courthouse as “red-carpet” treatment.²²

After the indictment in the case was made public, the former United States Attorney for the District of Puerto Rico, Rosa Emilia Rodríguez-Velez, made sweeping statements about public corruption in Puerto Rico, claiming that it was “[eroding] the trust between government officials and ... citizens.” She accused Keleher of having “exploited [her] position” and having “fraudulently awarded contracts[.]” Rodríguez Velez concluded that the charges were

²⁰ “Trato preferencial para Julia Keleher en aeropuerto,” July 16, 2019, <https://www.metro.pr/noticias/2019/07/16/trato-preferencial-para-julia-keleher-en-aeropuerto.html>

²¹ “Le gritan ‘pilla’ a Julia Keleher en su dramática entrada al Tribunal Federal,” July 16, 2019, <https://www.elnuevodia.com/videos/legritanpillaajuliakeleherensudramaticacentradaaltribunalfederal-video-256522/>. (Because the defense is not asking the Court to consider the audio, the words spoken by protestors in this published by El Nuevo Día have not been translated to English).

²² “Con alfombra roja y protección policial la llegada de Keleher,” July 16, 2019, <https://www.noticel.com/ahora/tribunales/con-alfombra-roja-y-proteccion-policial-la-llegada-de-keleher/1094272339>.

“reprehensible”, particularly “in light of Puerto Rico’s fiscal crisis.”²³ Criticism of Keleher and her co-defendants was swift and unrelenting. Then-Governor Rossello echoed the criticisms voiced by the federal authorities, stating that “[t]he allegations against [the defendants] ... [were] a disgrace[.]”²⁴ In the mainland United States reproaches were also quick to emerge as news outlets ran the stories of Keleher’s arrest against the backdrop of the larger financial crisis on the island. Congressman Raúl M. Grijalva, an Arizona Democrat who chairs the House Committee overseeing Puerto Rico, was one of the first to call for the resignation of Governor Rossello on account of the indictment against Keleher. *Id.*

Most importantly, the indictment came at a time of widespread protests against former Governor Rossello and his administration. These efforts dominated the local media for weeks and were also reported internationally. At the time of the indictment, Puerto Rico was amid unprecedented civil unrest and upheaval, as hundreds of thousands of people were calling for former Governor Rossello’s resignation.²⁵ These protests were primarily in response to the leak of Telegram messages in which Governor Rossello and his inner circle insulted women, homosexuals, and political opponents, and in which they made light of the casualties caused by Hurricane Maria. But these protests were also the result of a long-simmering frustration caused by

²³ “Former Secretary of Puerto Rico Department of Education and Former Executive Director of Puerto Rico Health Insurance Administration Indicted With Four Others For Conspiracy, Wire Fraud, Theft Of Government Funds, And Money Laundering,” July 10, 2019, <https://www.justice.gov/usao-pr/pr/former-secretary-puerto-rico-department-education-and-former-executive-director-puerto-1>.

²⁴ “US lawmaker who oversees Puerto Rico calls for governor to resign after 6 arrested on corruption charges,” July 11, 2019, <https://www.usatoday.com/story/news/politics/2019/07/11/puerto-rico-corruption-arrests/1701392001/> (“The allegations against the people arrested today are a disgrace,” Rossello tweeted. “Our public policy is clear: we will fight corruption in all its forms. No one is above the law”).

²⁵ “Puerto Ricans flood streets, demand resignation of governor in huge protest,” July 22, 2019, <https://www.nbcnews.com/news/latino/march-people-puerto-rico-mobilizes-largest-protest-gov-rossell-s-n1032286>.

the perceived incompetence of present and former Puerto Rican political leaders.²⁶ Thousands of people participated in these protests, which continued for approximately two weeks, until Governor Rossello's resignation.

The prevailing sentiment of hundreds of thousands of protesters was that Keleher was the face of corruption in the Rossello administration. During the protests individuals wore t-shirts with a photoshopped depiction of Keleher's mugshot, waved posters with a cut-out of Keleher's photo which stated that "[w]e want her in jail!" and "GUILTY", as well as posters that specifically stated that Keleher had stolen \$13 million in government funds.²⁷ These fervent public outcries ignored the fact that the indictment in the case did not allege that Keleher personally benefitted in any way from the alleged conduct. Although these protests constituted a legitimate exercise of the public's constitutional rights, they chipped away at Keleher's fundamental rights – her right to be presumed innocent, her right to a fair trial, and her right to eventually be judged by an uncontaminated pool of unbiased jurors. The protests continued to deepen and amplify the prejudice and bias Keleher now faces. Far from enjoying a legal presumption of innocence, the cornerstone of our criminal justice system, Keleher's alleged guilt has already been pre-judged.

To quantify the toxic effect of the media coverage of Keleher's arrest and of the general visceral hatred towards Keleher on potential jurors in Puerto Rico, the defense commissioned a survey of eligible jurors in September 2019. It concluded that roughly 85% of the residents of Puerto Rico who meet juror requirements are aware of the indictment in this case, 77% of those familiar with the case presume that defendants are guilty, of which 73% think there is a substantial

²⁶ "Puerto Rico's week of massive protests, explained," July 22, 2019, <https://www.vox.com/2019/7/20/20701898/puerto-rico-protests-ricardo-rossello-resign-ricky-renuncia-text-scandal>.

²⁷ Exhibit 1 (Photographs of protesters wearing t-shirts and waving posters of Keleher during protests).

amount of evidence against defendants, and 68.8% of which expressed “a lot” of anger or hostility towards defendants. *See* Docket No. 172 at pp. 12-13. In this environment, Keleher and her co-defendants will have their constitutional due process rights trampled upon. They will not receive a fair trial and the Court should not permit such a travesty of justice to occur on its watch. The law contemplates change of venue relief precisely because there are cases where a change in the venue of the trial is both warranted and necessary. This is undoubtedly such a case.

II. Analysis

“It is a fundamental constitutional canon that criminal defendants have a right to trial by an impartial jury.” *United States v. Quiles-Olivo*, 684 F.3d 177, 181 (1st Cir. 2012) (citing U.S. Const. amend. VI and *Skilling v. United States*, 516 U.S. 358, 378 (2010)). The Supreme Court has stated that defendants have a right to trial by “indifferent” jurors “free from outside influences,” who will “base their decision solely on the evidence,” undisturbed by personal prejudice or public passion. *Sheppard v. Maxwell*, 384 U.S. 333, 362 (1966). To this point, Federal Rule of Criminal Procedure 21 provides that, upon motion, “the court **must** transfer the proceeding against that 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.” Fed. R. Crim. P. 21 (emphasis added).

In *Rideau v. Louisiana*, 373 U.S. 723 (1963), the Supreme Court provided foundational support for the concept of presumed prejudice. Prejudice can be presumed when a “degree of inflammatory publicity ha[s] so saturated the community such as to make it virtually impossible to obtain an impartial jury.” *United States v. Mislá-Aldarondo*, 478 F.3d 52, 58 (1st Cir. 2007) (internal citations omitted). The Supreme Court enumerated “four factors relevant to presuming prejudice: the size and characteristics of the community, the nature of the publicity, the time

between the media attention and the trial, and whether the jury’s decision indicated bias.” *United States v. Casellas-Toro*, 807 F.3d 380, 386 (1st Cir. 2015) (citing *Skilling vs. United States*, 561 U.S. 358, 379 (2010)).

The decision to transfer a case is ultimately predicated on the existence of “an unacceptable level of prejudice against the defendant” which is likely to mar a trial. *United States v. Walker*, 655 F.2d 212, 223 (1st Cir. 2011). In *Moreno-Morales* the First Circuit opined that a change of venue “remains a feasible option for a Puerto Rico accused confronted with publicity at home.” *United States v. Moreno-Morales*, 815 F.2d 725, 737 (1st Cir. 1987). There is no doubt that the pretrial publicity in this case, coupled with the inordinate level of personal vitriol against Keleher, constitutes so great a prejudice against Keleher that she cannot receive a fair and impartial trial. The factors relevant to the assessment of presumed prejudice, and others that are implicit in these considerations, will be discussed in turn.

i. Size and characteristics of the community

Puerto Rico’s jury pool is far smaller than raw numbers suggest

Puerto Rico is “a compact, insular community” of roughly 3.5 million residents. *Moreno-Morales*, 815 F.2d at 734. To some, Puerto Rico may appear to be a vast community of potential jurors, like large cities such as Houston and Boston. *See In re Tsarnaev*, 780 F.3d 14, 21 (1st Cir. 2015) (discussing the characteristics of Houston and Boston in the context of motions for change of venue). Those with a keen eye, however, can look past the raw numbers and reach what makes the District of Puerto Rico unique—most of its residents are not qualified to be federal jurors.

28 U.S.C. § 1865(b), the jury plan adopted by the U.S. District Court for the District of Puerto Rico, states that “[e]very person shall be deemed qualified to serve [on a jury] in this Court if he or she . . . is able to read, write, speak, and understand the English language with a degree of

proficiency sufficient . . . to render satisfactory jury service in this Court.”²⁸ In the 2016 census, 77% of Puerto Ricans 18 years or older indicated they spoke English less than “very well.”²⁹ Some scholars estimate that only roughly 10% of adult Puerto Ricans speak English at a level “adequate for service on a federal jury.”³⁰ Taking those estimates as true, the jury pool in Puerto Rico consists of approximately 360,000 people. In comparison, the jury pools of New Hampshire (approx. 726,000), Maine (approx. 828,000), Rhode Island (approx. 532,000), and Massachusetts (approx. 3,345,000) are far larger and, thus, more likely to give way to a fair and impartial jury.³¹

Puerto Rico’s history of corruption and current fiscal situation
has tainted the jury pool against Keleher

Puerto Rico has historically been a hotbed for government misuse and corruption. As it stands, Puerto Rico is billions of dollars in debt, and the general sentiment is that corrupt politicians, working in the shadows to benefit themselves and destroying the Island’s economy in the process, bear the brunt of the responsibility for this fiscal crisis. The situation reached a fever pitch just as the indictment in this case was returned. Specifically, this past July, dubbed the “summer of 2019,” hundreds of thousands of protesters took to the streets in massive protests targeting those in power, the Fiscal Oversight and Management Board for Puerto Rico (“FOMB”),

²⁸ The District for Puerto Rico’s plan, Amended Plan for the Random Selection of Grand and Petit Jurors Pursuant to the Jury Selection and Service Act of 1968, as Amended (Feb. 22, 1982), available at <https://www.prd.uscourts.gov/jury-service>.

²⁹ U.S. Census Bureau, 2012-2016 American Community Survey 5-Year Estimates.

³⁰ See Jasmine B. Gonzales Rose, *The Exclusion of Non-English-Speaking Jurors: Remediating a Century of Denial of the Sixth Amendment in the Federal Courts of Puerto Rico*, 46 Harv. C.R.-C.L. L. Rev. 497, 505 (2011).

³¹ Number Of Registered Voters by State, 2019, <http://worldpopulationreview.com/states/number-of-registered-voters-by-state/>.

and years of what the populace perceived as governmental abuse.³² Keleher became a talisman of the movement. The Court, as a member of the community, can take judicial notice of this fact.

During the demonstrations, protesters held signs with Keleher's face photoshopped onto a mugshot, they shouted inflammatory messages about her, and they vigorously called for her incarceration. In short, Keleher became the face of the protests and the collective disdain for a corrupt political class. The focus was unfairly and unjustifiably on Keleher. Today this hatred continues unabated. The vitriol has not stopped. Keleher continues to be one of the most despised public figures in Puerto Rico's history. To suggest that Keleher can have the benefit of a fair trial before an impartial jury on this island, when those very jurors have been advocating for her incarceration for many months, is to abandon the text and purpose of the Sixth Amendment.

ii. Nature of the publicity

Puerto Rico is "highly susceptible to the impact of local media." *Moreno Morales*, 815 F.2d at 734. In the context of a motion for change of venue, this Court has acknowledged that the Commonwealth of Puerto Rico, while having more than 3 million residents, is nonetheless "a compact insular community" for purposes of deciding whether publicity surrounding a defendant's trial is such that prejudice to his or her right to trial by fair and impartial jury should be presumed. *United States v. Casellas-Toro*, 807 F.3d 380, 386 (1st Cir. 2015). The First Circuit has stated that Rule 21(a)'s requirements apply to cases "in which pervasive pretrial publicity has inflamed passions in the host community past the breaking point." *United States v. Walker*, 665 F.3d 212, 223 (1st Cir. 2011). In short, this is undoubtedly such a case.

³² "IEEFA Puerto Rico: The current unrest culminates a long history of debt and corruption," July 24, 2019, <https://ieefa.org/ieefa-puerto-rico-the-current-unrest-culminates-a-long-history-of-debt-and-corruption/>.

“Prominence does not necessarily produce prejudice, and juror impartiality, we have reiterated, does not require ignorance.” *Skilling*, 561 U.S. at 379 (citing *Irvin v. Dowd*, 366 U.S. 717, 722 (1961)). In *Skilling*, the Supreme Court’s most recent expression on transfers of venue, the high court made the distinction that juror exposure to publicity, standing alone, does not presumptively deprive a defendant of due process. *See id.* (quoting *Murphy v. Florida*, 421 U.S. 794, 798-99 (1975)). There can be no reasonable debate that not all publicity erodes juror impartiality. However, it is equally true that certain types of publicity inescapably result in juror bias, and ultimately infect the impartiality of potential jurors, thereby undermining a defendant’s right to a fair trial.

This case is anomalous among prosecutions in the District of Puerto Rico, insofar as it came at a time of unprecedented political and civil unrest on the island. At the time when the grand jury returned the Indictment, Puerto Ricans flooded the streets, demanding the resignation of then-Governor Rossello and members of his administration in huge protests. Approximately 500,000 protesters paralyzed the San Juan metropolitan area, denouncing then-Governor Rossello and his administration. For protesters, the indictment of Keleher and her co-defendants constituted the final straw. The principal newspaper on the island captured public sentiment in the report of the day: “[i]t was impossible to imagine the profound change that the country was about to face when in the early hours of July 10 we woke up with a news that, tragically, is almost routine [in Puerto Rico]: the federal authorities were making arrests for corruption in the government. Soon after we realized that the persons involved were ex-secretary of Education Julia Keleher ... together with [five] other people.”³³ With Keleher’s arrest and these massive protests, for which Keleher became

³³ “Los quince días que tumbaron a Rosselló,” July 25, 2019, <https://www.elnuevodia.com/noticias/politica/nota/losquincediasquetumbaronarossello-2507877/>.

the poster child, came pervasive pretrial publicity that undoubtedly inflamed the passions of an already angry and frustrated community.

For many, Keleher's arrest was a welcomed result of her highly publicized and controversial tenure at the helm of the Department. Under her administration, the Department implemented controversial measures to reform the education system, such as administrative restructuring, the closure of more than four-hundred public schools, and the passage of an education reform act that gave way to the creation of unwelcomed charter schools in Puerto Rico. All of this was coupled with criticism for what the public perceived was an excessive \$250,000 salary. Since Keleher took office, Puerto Ricans have rebuked her and made her the object of their condemnation.

In addition to the vast amount of news articles regarding the investigation surrounding Keleher, the Indictment, her arrest, and her arrival to Puerto Rico and the federal courthouse, the comments made by members of the public in these news articles and on social media platforms are particularly telling of the prejudice that weighs against Keleher in this district. The overwhelming number of comments regarding the case were reflective of the general animosity against Keleher:

- *¿Ahora que va a hacer con su sueldazo? Humilló a los maestros de P.R. Cerro escuelas. Ahora la van a cerrar a ella.* (“Now what will she do with her high salary? She humiliated the teachers of P.R. Closed schools. Now they will lock her up.”).
- *Yo me alegro que la investiguen es una corrupta.* (“I am glad that she is being investigated she is corrupt.”).
- *La nena del gobernador que mucho robo.* (“The governor's girl stole a lot.”).
- *Racista cabrona y pillos envidiosos.* (“Racist bitch and envious thieves.”).

- *Empezó la limpieza ... esa corrupta que pague con cárcel.* (“The cleansing has commenced ... that crook should pay with prison”).
- *Esa corrupta se le vio la costura desde el primer día.* (“The intentions of that crook were clear since the first day.”).
- *They gotcha dirty blonde thieving ASS BITCH.*
- *Esta ya era una corrupta en Filadelfia.* (“This one was already a crook in Philadelphia.”).
- *No olviden que esta CACATUA PELUA que le robo 15 millones a la educación de nuestros niños, llega hoy martes 16 a PR y entregarse a las autoridades. Seria sobroso un recibimiento bien caluroso de los maestros y el pueblo #Keleher #Corrupta #Ladrona.* (“Don’t forget that this HAIRY CACKATOO who stole 15 million from the education of our children, arrives today Tuesday 16 to PR and will surrender to the authorities. It would be great to receive her with a warm welcome from the teachers and from the people #Keleher #Corrupt #Thief.”).³⁴

In addition to the foregoing, several journalists published articles comparing Keleher to former secretary of education of Puerto Rico, Victor Fajardo.³⁵ Former secretary Fajardo served as Puerto Rico’s Secretary of Education from 1996 to 2000 at a time when Pedro Rossello-Gonzalez (Governor Ricardo Rossello’s father) was the Governor of Puerto Rico. That is, however, where any similarity between him and Keleher ends. Fajardo was charged with corruption consisting of extortion, money laundering, and theft of U.S. Funds. Keleher is not alleged to have benefited from even \$1 of public money. But the criticisms against Keleher are not intellectual; they are visceral. Facts are not a part of this media concoction or the public outcries. As stated in an article published by journalist Sandra Rodriguez Cotto in NotiCel: “for Puerto

³⁴ Exhibit 2 (Comments made by the public to news articles reporting on Keleher’s arrest).

³⁵ See, e.g., “Keleher = ¿Fajardo en inglés?”, April 7, 2019, <https://www.noticel.com/opiniones/blogs/en-blanco-y-negro-con-sandra/keleher-fajardo-en-ingles-/1066493016>; “La historia se repite,” July 10, 2019, <https://www.elnuevodia.com/opinion/columnas/lahistoriaserepite-columna-2504555/>.

Ricans the first name and last name Julia Keleher will always be viewed with anger and many already associate it with the past. In these days many voices emerge comparing her name to that of Victor Fajardo, but in English. In other words, synonyms of nebula; and some point out that they both equal to (*sic*) corruption.” *Id.*

There can be no reasonable debate that media coverage of the Keleher case has not been factual or impartial. On the contrary, the reports and commentaries have been “inflammatory [and] sensational,” particularly those of political commentators and celebrities, who are the people who sway public opinion in Puerto Rico these days. *United States v. Angiulo*, 897 F.2d 1169, 1181 (1st Cir. 1990). Moreover, a study conducted by marketing research company Gaither International Puerto Rico, revealed that “[i]n 2013, 70% of the audiences were on social media networks. That percentage grew to 87% in 2016, and by 2019 they easily reach 99% of the population.”³⁶ Critics have mocked and insulted Keleher in social media through numerous memes, fake social media profiles, and even a satirical Japanese-style cartoon.³⁷ In fact, a quick Google search of the terms “Keleher” and “memes” quickly reveals several memes made from Keleher’s pictures, which convey a variety of different messages such as “Julia Keleher, what a bitch!” and “I am Victor Fajardo”. Because the majority of Puerto Ricans are now connected to social media platforms, they are constantly exposed to these types of messages, as well as exposed to so-called political commentators and influencers who have vociferously celebrated Keleher’s arrest, as described above.

³⁶ “Consumo mediatico boricua 2019-2020,” November 24, 2019, <https://www.noticel.com/opinion/blogs/en-blanco-y-negro-con-sandra/consumo-mediatico-boricua-2019-2020/1144933238>.

³⁷ “De la nada- Julia Keleher (parodia de sailor moon),” August 15, 2017, <https://www.youtube.com/watch?v=4jkXValu6iY> (Video published YouTube. Because the defense is not asking the Court to consider the audio, the words spoken in the video have not been translated to English.).

After the Indictment in this case, the United States Attorney for the District of Puerto Rico, politicians, political commentators, and celebrities had a field day with Keleher's name and reputation. Hours, days, and weeks were devoted to criticizing Keleher and her alleged acts of corruption. Without a doubt, this media frenzy, coupled with the fact that this case marked the end to a series of unfortunate government-related scandals, demonstrates that Keleher's right to a trial by fair and impartial jury has been severely compromised. Such has been the media attention that commentators in news articles have alluded to the necessity for a change of venue in this case. One such commenter stated: "[i]n English it's called 'change of venue' . . . In short, the evidence to grant a transfer is there [,] she will not have a fair trial." *Id.* at Exhibit 2. For these reasons, this factor also weighs in favor of granting a motion for change of venue.

iii. Time between media attention and the trial

Trial in this case is scheduled to commence on May 4, 2020. Docket No. 16. Admittedly, that is six months away and roughly ten months after the massive protests engulfed the island. However, trial would begin on the eve of primary elections for both the Popular Democratic Party and the New Progressive Party³⁸, the party responsible for Keleher's appointment. During that time, the platforms of both parties will predictably launch criticism of the respective wrongdoings of the other. Keleher is sure to be embroiled in this mudslinging, and the political animus is in turn sure to revive the media spectacle that governed July 2019.

In the last several weeks, numerous news articles covering the primary elections have alluded to this fact, and local political figures have used the allegations made in this case to their

³⁸ See "Calendario Electoral 2020," August 22, 2019, <http://ww2.ccepur.org/es-pr/Secretaria/Acuerdos/CALENDARIO%20ELECTORAL%202020.pdf>.

advantage. Specifically, an article published by El Nuevo Día, which analyzed New Progressive Party gubernatorial candidate Pedro Pierluisi and his electoral strategy, reported that Pierluisi is strategically isolating himself from the “New Progressive Party brand” because of “negatives” surrounding the party, such as the arrest of Keleher.³⁹ Similarly, gubernatorial candidate for the Popular Democratic Party of Puerto Rico, Charlie Delgado Altieri, recently tweeted an image enclosing a photo collage of front pages from several local newspapers covering several New Progressive Party corruption scandals, including Keleher’s arrest and indictment. Referring to these images, Delgado tweeted: “[t]hese covers are not taken from a crime series on Netflix. They are accusations of corruption against the current PNP government. The poor administration of public funds has a devastating effect on the most vulnerable sectors. Puerto Rico needs sound administration!”⁴⁰ Surely, this case will become a central point in the upcoming gubernatorial elections, and coverage related to Keleher will not subside in the meantime. Accordingly, this factor also weighs in favor of granting a motion for change of venue.

iv. Community-impact study

A presumption of prejudice can be shown when “so many jurors admit to a disqualifying prejudice that the trial court may legitimately doubt the avowals of impartiality made by the remaining jurors.” *United States v. Rodriguez-Cardona*, 924 F.2d 1148, 1158 (1st Cir.1991). A repetition of the substance of the study is unnecessary because it has been extensively argued in co-defendants’ joint filing. Nevertheless, the results of the survey commissioned by the defense are disturbing and serve as conclusive proof that Keleher cannot receive a fair trial in Puerto Rico.

³⁹ “Pierluisi se aleja de la Palma como marca,” November 19, 2019, <https://www.pressreader.com/puerto-rico/el-nuevo-dia/20191119/281492163152673>.

⁴⁰ See tweet posted by Charlie Delgado Altieri (@DelgadoAltieri) on October 28, 2019, <https://twitter.com/DelgadoAltieri/status/1188787067746226176/photo/1>.

III. Conclusion

In this case, given the level of hateful, critical, and unrelenting discourse directed against Keleher, “there is an ever-prevalent risk that the level of prejudice permeating the trial setting [will be] so dense that [Keleher] will not possibly receive an impartial trial.” *Quiles-Olivo*, 684 F.3d at 182. The Commonwealth of Puerto Rico is a small island where political news is paramount. Continuous news reports and adverse comments concerning Keleher have dominated the media since before the return of the indictment in this case. The indictment has invited criticism from wide sectors of the community across the island and “[saturated the community] with inflammatory publicity about the case”, *United States v. Brandon*, 17 F.3d 409, 441 (1st Cir. 1994), which “precludes a fair and impartial trial[.]” *United States v. Mislá-Aldarondo*, 42 F.3d 52, 58 (1st Cir. 2007) (internal citations omitted).

Keleher is facing serious federal charges. She should at least expect a level playing field, where a fair trial is assured. But the guarantee of a fair trial is an impossibility if a jury has been infected by media opinions and harbors prejudice against the defendants. The unyielding media coverage of Keleher, coupled with the animosity many in the community continue to harbor against her for the tough decisions she made as Secretary of the Department, stack the deck against her. That is not the way our system of justice was designed to operate. Allowing this trial to go forward in Puerto Rico would operate a grave injustice against Keleher and would undermine the basic tenets of fairness and due process in our system of justice. A change of venue for the trial is the only reasonable way to protect the defendant’s constitutional rights.

WHEREFORE, the defendant, Julia Beatrice Keleher, respectfully requests the Court GRANT this motion.

Respectfully submitted on this 27th day of November, 2019, in San Juan, Puerto Rico.

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I HEREBY CERTIFY that on this date, I 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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EXHIBIT 1

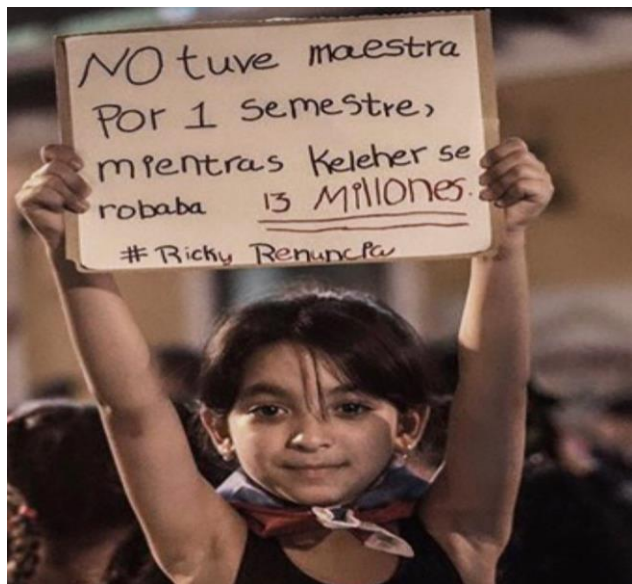




EXHIBIT 2



Emilio Sanchez

Ahora que va a hacer con su sueldazo? Humilló a los maestros de P.R. Cerró escuelas. Ahora la van a cerrar la a ella.

Like · Reply · 85 · 19w



Gilberto Nieves Molina

Yo me alegro que la investiguen es una corrupta

Like · Reply · 20 · 19w



Carmen Ramos

La la nena del gobernador mucho que robo

Like · Reply · 13 · 19w



Rose Rosado

Racist cabrona y pillos envidioso

Like · Reply · 19w



Migdalia Díaz

Empezo la limpieza...esa corrupta espero que pague con carcel.

Like · Reply · 19w



Migdalia Díaz

Esa corrupta se le vio la costura desde el primer dia.

Like · Reply · 19w



Edwin Rosa

They gotcha dirty blonde thieving ASS BITCH..

Like · Reply · 19w



Contexto + Perspectiva

Hace 132 días

ESta ya era una corrupta en Filadelfia.

Me gusta · Responder · Compartir

1

No olviden que esta CACATÚA PELUA que le robó 15 millones a la educación de nuestros niños, llega hoy martes 16 a PR y entregarse a las autoridades. Sería sabroso un recibimiento bien caluroso de los maestros y el pueblo. 🔥🔥🔥 #Keleher #Corrupta #Ladrona SOS SOS SOS 🇵🇷🇵🇷🇵🇷.



Ocirgi

Hace 132 días

En inglés se llama "change of venue" El racismo no solo es color de piel ya que muchos judios son blancos. El hecho de discriminar por su forma de hablar español, el saber que es norteamericana... En fin la evidencia para dar el transfer está no tendrá un juicio justo.

Me gusta · Responder · Compartir

👍 0