IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES	*	
vs.	*	Case No.: 21-CR-28-APM
THOMAS E. CALDWELL	*	

* * * * * * * * * * *

Motion to Transfer Venue

COMES NOW the Defendant, Thomas E. Caldwell ("Caldwell"), by and through his attorney, David W. Fischer, Esq., and respectfully moves this Honorable Court for a transfer of venue for his trial by an impartial jury under the Fifth and Sixth Amendments and pursuant to Rule 21(a) of the Federal Rules of Criminal Procedure.

Memorandum in Support of Motion to Transfer Venue

I. Legal Analysis

"The theory in our system of law is that conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence[.]" Patterson v. Colorado, 205 U.S. 454, 462 (1907). Accordingly, Justice Hugo Black observed that the American justice system "has always endeavored to prevent even the probability of unfairness." In re Murchison, 349 U.S. 133, 136 (1955). Incorporating these principles, Federal Rule of Criminal Procedure 21(a) mandates that the trial court "must transfer [a criminal] proceeding . . . 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).

Factors to be considered in whether to grant a venue change requested based upon prejudicial pretrial publicity are the size and characteristics of the community, the nature and extent of pretrial publicity, the proximity between the publicity and the trial, and evidence of juror partiality. United States v. Skilling, 561 U.S. 358, 378-381 (2010). In some cases, a potential jury pool can be determined to be irredeemably biased when the alleged crime results in "effects . . . on [a] community [that] are so profound and pervasive that no detailed discussion of the [pretrial publicity and juror partiality] evidence is necessary." United States v. McVeigh, 918 F. Supp. 1467, 1470 (W.D. Okla. 1996) (summarily finding that a trial of Oklahoma City bombing suspects in federal court in Oklahoma City (Western District of Oklahoma) would be constitutionally unfair).

II. **Argument**

A. Factual and Procedural Background.

The instant case arises out of the unfortunate events of January 6, 2020, a protest "gone wild" on Capitol Hill. Hundreds of defendants have been charged with various crimes. Caldwell, along with fifteen other defendants, is charged in the Fourth Superseding Indictment ("the Indictment") with crimes stemming from an alleged conspiracy by the "Oath Keepers" organization to derail the Electoral College Certification process. Specifically, Caldwell is charged with four counts in the Indictment: Count 1--Conspiracy (18 U.S.C. § 371), Count 2--Obstruction of an Official Proceeding (18 U.S.C. § 1512(c)(2)), Count 4 --Entering and Remaining in a Restricted

Building or Grounds (18 U.S.C. § 1752(a)(1)), and Count 9--Tampering with Documents or Proceedings (18 U.S.C. § 1512(c)(1)). ECF No. 210, ¶¶ 32, 166, 170, 183.

Caldwell was the first defendant charged in the Capitol Hill protest with major felony crimes such as conspiracy. Accordingly, the announcement of Caldwell's arrest on January 19th saturated the national and local news with blaring headlines, such as:

> ***Oath Keepers Face First Conspiracy Charges Over Capitol Riot*—(Bloomberg, Jan. 19, 2021)**
>
> ***'I Am Such an Instigator': Oath Keeper Leader Charged With Conspiracy in Capitol Riots*—(Daily Beast, Jan. 19, 2021)**
>
> ***Prosecutors say Oath Keepers militia members conspired in U.S. Capitol siege*—(Reuters, Jan. 19, 2021)**
>
> ***First Capitol riot conspiracy charge filed against alleged Oath Keepers leader*—(The Hill, Jan. 19, 2021)**
>
> ***Self-styled militia members planned on storming the U.S. Capitol days in advance of Jan. 6 attack, court documents say*—(Wash. Post, Jan. 19, 2021).**

Hundreds of print, radio, and television media outlets broadcasted similar stories. Many of these stories, citing Government filings and sources, described Caldwell as a "leader" of the Oath Keepers organization, and claimed that Caldwell led the "planning and organizing" of a "military-style" attack on the Capitol. Most inflammatory, news outlets, citing charging documents, suggestively reported that Caldwell and others *intended to execute members of Congress* while inside the Capitol. The *Washington Post* advised its readers:

> In charging papers, the FBI said that during the Capitol riot, Caldwell received Facebook messages from unspecified senders updating him of the location of lawmakers. When he posted a one-word message, "Inside," he

> received exhortations and directions describing tunnels, doors and hallways, the FBI said.
>
> Some messages, according to the FBI, included, "Tom all legislators are down in the Tunnels 3floors down," and "Go through back house chamber doors facing N left down hallway down steps." Another message read: "All members are in the tunnels under capital seal them in. Turn on gas," the FBI added.

Hsu, Jackman, and Barrett, *Self-styled militia members planned on storming the U.S. Capitol days in advance of Jan. 6 attack, court documents say*, Wash. Post (Jan. 19, 2021). In the first paragraph of its above-the-fold story, The *Wall Street Journal* reported:

> Prosecutors filed conspiracy charges related to the mob that stormed the U.S. Capitol Jan. 6, saying in a new complaint that three rioters had acted in an "organized and practiced fashion" and at one point *appeared to suggest the possibility of gassing lawmakers in the tunnels below the building*.

Aruna Viswanatha, *Conspiracy Charges filed in Capitol Riots*, WSJ (Jan. 19, 2021) (emphasis added). Hundreds of television, radio, and newspaper reports in the District and around the country parroted the Government's suggestion in charging documents that Caldwell and other defendants had, as part of their "attack plan" on the Capitol, intended to execute members of Congress.

B. **False claims by the Government, which were amplified in the media, have irreversibly tainted the District's jury pool, requiring a change of venue.**

The Government's initial charging documents contained multiple misleading, inaccurate, and false statements regarding Caldwell which, having saturated the District's news media, have irreversibly prejudiced the District's jury pool. As noted in prior defense filings, the Government's initial charging documents inaccurately claimed that

Caldwell was a "member" of the Oath Keepers, that he held a "leadership role" ("the Commander") in the Oath Keepers, that he stormed inside the Capitol building, and that he was involved in a weeks-long plan to specifically invade the Capitol. Government counsel have, to their credit, backed off—albeit discreetly--all of those inaccurate claims, but not before they were repeated *ad nauseam* in every major print and broadcast news outlet in the District. These inaccurate allegations, in fact, caused this Honorable Court to initially detain Caldwell. Caldwell rhetorically asks the Court: If these inaccurate allegations prompted the Court to detain Caldwell, isn't it likely that potential District jurors would be predisposed against Caldwell based on the same misinformation?

More troubling, at least one false allegation against Caldwell—that he specifically planned to forcibly storm the Capitol—was made either knowingly or with reckless disregard for the truth. During an interview on CBS News *60 Minutes*, former Acting U.S. Attorney for D.C. Michael Sherwin, when asked about whether Caldwell and other Oath Keepers defendants premeditated an attack on the Capitol, engaged in the following dialogue:

> **Scott Pelley**: Was there a premeditated plan to breach the Capitol?
>
> **Michael Sherwin**: *That's what we're trying to determine right now*. We've charged multiple conspiracy cases, and some of those involve single militia groups, some of them involve multiple militia groups. For example, individuals from Ohio militia were coordinating with the—a Virginia militia group of Oath Keepers, talking about coming to the capital region, talking about—*no specific communication about breaching the Capitol*—but talking about going there, taking back the House. Talking about stopping the steal[.]

(Interview with Scott Pelley, *Inside the Prosecution of the Capitol Rioters*, 60 Minutes March 22, 2021). As the Court may recall, in its initial charging papers filed almost two months *before* Mr. Sherwin's interview aired, the Government confidently swore that "CALDWELL *planned* with DONOVAN CROWL, JESSICA WATKINS, and others known and unknown, *to forcibly storm the Capitol*. ECF No. 1-1 (emphasis added). A similar claim was made in the original indictment. ECF No. 3, ¶15. To the point: When U.S. Attorney Sherwin authorized the filing of charging documents against Caldwell, he knowingly allowed the dissemination of the false and incendiary claim that Caldwell and others had a specific, premeditated plan to take the Capitol by force.[1] In short, the Government ignited hundreds of false and prejudicial news stories claiming that Caldwell was the leader of a preplanned attack, which was *specifically designed to attack the Capitol*, all the while knowing that they had no evidence to back up this claim.

The Government's misleading charging papers have misinformed the public and caused unnecessary panic in the District, additionally tainting the potential jury pool. Most troubling was the Government's incendiary—and highly inaccurate-- suggestion in previous charging documents that Caldwell and Oath Keepers were chasing down

[1] The false claim that Caldwell and others specifically planned to attack the Capitol evolved from a rumor started by government bureaucrats attempting to cover up their incompetent leadership. For example, the Chief of the Capitol Police, without evidence, proclaimed that his leadership could not be faulted for the obvious security failure on January 6th because Caldwell and others "[were] part of a coordinated, planned attack on the Capitol." NPR, *Former Capitol Police Chief Steven Sund Defends Agency's Role in Jan. 6 Attack*, Jan. 15, 2021. Once the Government performed a cyber colonoscopy on the Oath Keepers defendants' cell phones and computers, it discovered that there was no "attack plan."

Members of Congress, trying to trap and kill them in the hallways of the Capitol. The Government charged:

> On January 6, 2021, while at the Capitol, CALDWELL received the following Facebook message: "All members are in the tunnels under capital seal them in. Turn on gas". When CALDWELL posted a Facebook message that read, "Inside," he received the following messages, among others: "Tom take that bitch over"; "Tom all legislators are down in the Tunnels 3floors down"; "Do like we had to do when I was in the cor[ps] start tearing o[u]t flo[o]rs go from top to bottom"; and "Go through back house chamber doors facing N left down hallway down steps.

See, e.g., ZMF--1:21-mj-00119 (Amend. Crim. Comp. Jan. 19, 2021). As noted *supra*, as a result of the Government's charging document, the media blared alarmist headlines and stories, including the following representative sample from the Associated Press:

> Authorities say the Oath Keepers communicated during the attack about where lawmakers were. At one point during the siege, Caldwell received a message that said "all members are in the tunnels under the capital," according to court documents. "Seal them in turn on gas," it said. Other messages read: 'Tom all legislators are down in the Tunnels 3floors down.' and "go through back house chamber doors facing N left down hallway down steps," according to court documents.

The Politico (via the AP), *Man charged in Capitol riot worked for FBI, lawyer says* (Feb. 9, 2021). CNN similarly ran with the Government's alarmist suggestion that Caldwell was part of an execution squad:

> Chilling messages sent *between the militants* during the siege that are quoted in the complaint appear to indicate *they were searching for lawmakers inside the building* as they sought to stop Congress from certifying the presidential election
>
> While at the Capitol, one alleged member of the conspiracy, Thomas Edward Caldwell, allegedly received a Facebook message reading "All members are in the tunnels under capital seal them in. Turn on gas."

David Shortell, et. al., *Members of Extremist Oath Keepers Group Planned Attack on Capitol, Prosecutors Say*, CNN (Jan. 19, 2021) (emphasis added). In the first line of its January 19th story, the *Washington Post* ominously told its readers that "[s]elf-styled militia members from Virginia, Ohio and other states . . . communicated in real time as they breached the [Capitol] on opposite sides *and talked about hunting for lawmakers*." Hsu, et. al., supra (emphasis added). These stories sent shockwaves through the public and prompted the military occupation of the District and construction of a security fence that surrounded the Capitol into June.

The Government, however, took the Facebook messages completely out of context, which resulted in the media unwittingly engaging in Yellow Journalism. The Facebook messages show Caldwell as part of a "group chat" with two men, both of whom were unmistakably messaging Caldwell and others from locations *more than 60 miles from the District*.[2] When Caldwell messaged, like a play-by-play announcer, his first-hand account of the events while standing *outside* of the Capitol, the two men sent

[2] Caldwell, for example, sent the following message out to both men at 1:44 p.m.:

Author Tom Caldwell (Facebook: [number redacted])
Sent 2021-01-06 18:44:32 UTC
Body You should be here[.]

At 2:54 p.m., one of the men clearly stated that he was "right here in Berryville, Va.," which is a two-hour drive from Washington. Not only do the Facebook messages clearly show that the men were far away from D.C., undersigned counsel has independently verified that both men were situated in rural Virginia at the time the messages were sent. Neither men have any connection to the Oath Keepers.

four messages between 2:51 p.m. and 3:09 p.m., joking about sealing Members of Congress in and offered, satirically, directions as to how to navigate the basement of the Capitol. The likely reason the Government subsequently removed its incendiary language from its latest indictment is because it was premised on *obvious joking banter*, to which Caldwell *never responded*. While tasteless, these *private, unsolicited* messages were obviously said in jest by individuals 60-plus miles from the Capitol. As a result of the Government's misleading, scare-mongering filing, potential jurors in the District to this day believe that Caldwell intended to execute Members of Congress.

Government counsel's prejudicial, extrajudicial statements have also added to the tainting of the jury pool in the District. Former acting U.S. Attorney Sherwin took it upon himself to express his personal opinion on *60 Minutes* that Caldwell and others tried to violently overthrow the U.S. government:

> **Scott Pelley**: I'm not a lawyer, but the way I read the sedition statute, it says that, "Sedition occurs when anyone opposes by force the authority of the United States, or by force hinders or delays the execution of any law of the United States." Seems like a very low bar, and I wonder why you're not charging that now?
>
> **Michael Sherwin**: Okay, so I don't think it's a low bar, Scott, but I will tell you this. *I personally believe the evidence is trending towards that*, and probably meets those elements.
>
> **Scott Pelley**: Do you anticipate sedition charges against some of these suspects?
>
> **Michael Sherwin**: *I believe the facts do support those charges*. And I think that, as we go forward, *more facts will support that*, Scott.

60 Minutes, Inside the Prosecution of the Capitol Rioters, Mar. 22, 2021 (Scott Pelley interview of former Acting U.S. Attorney Michael Sherwin) (emphasis added). Caldwell

has not been charged with sedition but, thanks to Mr. Sherwin, the District's jury pool is currently under the false impression that Caldwell was part of a plot to overthrow the government.

The *60 Minutes* interview given by the former U.S. Attorney for the District of Columbia was beyond reckless. Essentially, the chief law enforcement officer for the District personally vouched that he had inside information that Caldwell and others committed sedition. Mr. Sherwin's baseless claim that Caldwell was involved in a plot to overthrow the U.S. government was so out-of-bounds that this Court convened an immediate hearing to address the issue.[3] To personally vouch that evidence exists that a decorated, 20-year Navy veteran sought to overthrow the government is reprehensible and highly prejudicial to any potential jury in the District, which consumed these comments in their local paper. See Aaron Blake, *Sedition Charges for the Capitol Rioters? What it Would Mean Historically Speaking*, Wash. Post (March 23, 2021).

To summarize, the local and national (D.C.-based) press have run hundreds of stories pertaining to Caldwell that contain multiple false, misleading, and inaccurate allegations based upon misinformation supplied by the Government. Inaccurate claims that Caldwell was an Oath Keeper member, that he held a leadership role in the Oath Keepers, that he forced his way inside the Capitol, that he intended to execute Members

[3] While the Court was absolutely correct in conducting a hearing to address Mr. Sherwin's extrajudicial statements, the public hearing on this issue, unfortunately, amplified the former U.S. Attorney's reckless "sedition" allegation in hundreds of news stories.

of Congress, that he planned with others to specifically attack the Capitol, and that he did so to violently overthrow the government *ispo facto* have prejudiced the potential District jury pool. Caldwell is entitled to have his case heard by a jury that has not been inflamed and prejudiced against him. That the Government's reckless charging documents and statements have caused the prejudice makes Caldwell's request for transfer more compelling.

C. **A transfer is required because of circumstances unique to this case.**

While the inaccurate portrayal of Caldwell in the press as a result of the Government's reckless claims is more than enough reason for the Court to transfer this matter, Caldwell's case also presents several unique circumstances that compel a venue change.

Most notably, Caldwell's case is tied to an event that was so impactful on the psyche of District residents that it is *per se* impossible for local jurors to reach a fair and impartial verdict. District residents have been bombarded with wall-to-wall coverage of the January 6th events, related arrests, criminal charges, and the aforementioned false and incendiary Government claims. The Court can take judicial notice that sections of the District were shut down for a period of weeks as roughly 25,000 National Guard troops roamed the Capitol in armored vehicles or on foot while wearing M-16s. The Mayor of D.C. declared a state of emergency and implemented a 6 p.m. curfew for weeks. Speaker Pelosi shut down all access to the Capitol into June. Bridges and roads into the District

were closed off for a period of time. The Department of Homeland Security declared that government offices were potential targets of "Domestic Violent Extremists."

The Court, respectfully, should find that by the very nature and circumstances of the allegations against Caldwell, that the community impact from January 6th is "so profound and pervasive" that it would be nearly impossible to seat a fair and impartial jury. See, e.g., United States v. McVeigh, 918 F. Supp. 1467, 1470 (W.D. Okla. 1996); United States v. Awadallah, 457 F. Supp. 2d 246 (S.D.N.Y. 2006) (suggesting that had the defendant, who was charged with perjury, actually participated in the 9-11 attacks on New York, "the effects that a massive, disastrous event has wrought on the jury pool" would require a change of venue).[4] This case is unique in that every potential juror in the District was impacted by the events on Capitol Hill on the 6th of January.

The second unique circumstance about the instant case is that the overwhelming majority of District residents despised Caldwell and his co-defendants *before* January 6th. District residents are overwhelmingly "progressives" and anti-Trump. Only 5% of District residents voted for Donald Trump in the 2020 election, with most of that vote likely being Republican congressional staffers. The Court can take judicial notice that,

[4] In McVeigh, the district judge made two rulings on venue changes. His first decision was to grant a change a venue from the Western District of Oklahoma, where Oklahoma City is located. McVeigh, 918 F. Supp. at 1470. That the decision was based on the obvious impact that the Oklahoma City bombing had on the community. The second, and more difficult issue, for the district judge, was whether to transfer the trial to the Eastern District of Oklahoma, or to move the case out of state. In deciding to transfer the trial to Colorado, the district judge ruled that the "emotional burden of the explosion and its consequences" and the community prejudice against the defendants necessitated a transfer out of state. Id. at 1473.

with few exceptions, potential District jurors loathe Donald Trump and, by extension, his supporters. The antipathy towards Trump and his supporters in the District is obvious.

Since Donald Trump was elected President in 2016, large numbers of District residents have engaged in both peaceful and violent protests targeted at Trump and his supporters. Inauguration Day 2016 saw violent protests in the District, with anti-Trump protesters destroying businesses, cars, and other property, and attacking Trump supporters. The District is the birthplace of "The Resistance," which was a loosely organized movement among left-wing activists to thwart President Trump's lawful executive orders and actions. "The Resistance" was consistently hailed by local officials and lauded by the local press. Hardly a week went by during Trump's presidency, moreover, without an anti-Trump protest outside the White House, Congress, the Trump Hotel, at local universities, and other District locales.

District residents, moreover, have hectored Trump-supporting Members of Congress, surrounded them in restaurants (e.g., Ted Cruz), congregated around their homes (e.g., Lindsay Graham, Josh Hawley), aggressively confronted them on the street (e.g., Rand Paul), and engaged in incessant "protests" around former Majority Leader McConnell's home. District protesters attempted to burn down historic St. John's church, vandalized millions of dollars of statues and other property, and surrounded the White House in an illegal assemblage during BLM and anti-Trump protests. One Democrat Hill staffer yelled "**** you, Mr. President" as President Trump walked the halls of Congress. The crowd at the Washington Nationals baseball game booed

President Trump during the World Series. An anti-Trump zealot shot up a softball practice just across the Potomac in Alexandria, nearly killing Majority Whip Steve Scalise. The level of antipathy towards Trump and his supporters in the District is off the charts and makes it impossible to find an impartial jury.

District residents not only despise Caldwell's politics—they despise many things that traditional America stands for. District residents, who largely style themselves as chic, sophisticated, worldly, high-brow urbanites, are repulsed by rural America's traditional values, patriotism, religion, gun ownership, and perceived lack of education. Conversely, rural America is repulsed by what it perceives as East and West Coast progressive snobbery, addiction to government funding, lack of moral values, and petulant intolerance for those with different viewpoints. The "Two Americas" couldn't be more different and largely despise and distrust one another. To deny that the lion's share of potential District jurors will be highly predisposed against a Trump-supporting defendant is like denying that water is a liquid. Caldwell should be judged on the facts of the case and the law, not on his prior support for President Trump.

That the jury pool loathes Trump supporters *per se* is borne out by undersigned counsel's conversations with some D.C.-based attorneys, who have referred to the defendants as "hillbillies" and "white trash."[5] Another D.C. attorney publicly assigned

[5] Mr. Caldwell, a retired Lt. Commander and intelligence officer in the U.S. Navy who held a top-secret clearance, hardly qualifies as a hillbilly or white trash. Other co-defendants at the time of their arrests were, *inter alia*, successful small business owners, a car dealership owner, and an MBA graduate. The President of the Oath Keepers, Stewart Rhodes, is a graduate of Yale Law School. The hatred of Trump supporters has nothing

her Capitol Hill client a book and movie list, which included *Schindler's List*, *Bury My Heart at Wounded Knee*, the PBS documentary *Slavery By Another Name*, and the History Channel's *Burning Tulsa*. Ryan Reilly, *A Lawyer for Jan. 6 Defendants is Giving Her Clients Remedial Lessons in American History*, Huff. Post (June 21, 2021). The assumption that the attorney's 49 year-old grandmother client is a bigot in need of "hate therapy" because she supported President Trump is beyond outrageous, yet typifies the attitude of many District residents. Ironically, with the exception of *Schindler's List*, the assigned books and movies prescribed by the attorney are largely fictional, heavy on race-baiting and light on facts.[6]

Caldwell cannot receive a fair trial in the District because he is the victim of D.C.-based systemic race-baiting. The President, Attorney General, Speaker of the House, prominent politicians, and media personalities have engaged in the most shameful race-baiting regarding Caldwell and other defendants. They have repeated false claims that Caldwell and others are "white supremacists," "white nationalists," and "racists."

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to do with their educational levels or achievements, and everything to do with the person they supported and the traditional American values they stand for. This hatred, in turn, makes it impossible for Caldwell to receive a fair trial in the District.

[6] The astute observer would note that the perpetrators of the Holocaust were socialists, i.e., NAZIs ("National Socialists"), not small-government Republicans. The Tulsa "massacre" of 1921, moreover, is grossly misrepresented in the History Channel's chronicle and in hundreds of recent news stories, all of which, for some reason, neglect to mention that the "massacre" started when an armed group of African American men, *mistakenly* believing that a rape defendant was about to be lynched, shot and killed, in cold blood, nearly a dozen white men, igniting a three day race riot. This historical fact, which even black-owned newspapers in Tulsa at the time acknowledged, perhaps is the reason why the Tulsa "massacre" was called the Tulsa "race riot" for 90 years, until modern race-charlatans rewrote history for political purposes.

President Biden, in a speech ironically advertised as intended to heal America's racial divide, referred to January 6th Trump protesters as "thugs, insurrectionists, political extremists, and white supremacists." Sarah Lynch, *In Early action, Biden tries to make good on pledge to heal America's racial divide,* Reuters (Jan. 26, 2021). At his confirmation hearing, Attorney General Merrick Garland pledged to "supervise the prosecution of white supremacists and others who stormed the Capitol on 6 January." Martin Pengelly, *Merrick Garland vows to target white supremacists as attorney general*, The Guardian (Feb. 26, 2021). District-based media outlets daily run stories falsely claiming that Trump supporters at the Capitol were "white supremacists" or "white nationalists."

This disturbing pattern wherein politicians, media, and talking-heads make unsubstantiated claims of racism against others for crass, short-term political gain should be appalling to all civilized human beings. This systemic race-baiting is disgusting, vile, and vitiates Caldwell's ability to receive a fair trial in the District. Unfortunately, systemic race-baiting is standard operating procedure among many D.C.-based media and politicians. The constant false claims that Caldwell is either a white supremacist or associated with white supremacists are seared into the minds of potential D.C. jurors, who are largely predisposed to have negative impressions of right-of-center Americans. To obtain an impartial jury, Caldwell will need to be tried outside of the District, where he has been unfairly branded a racist.

Finally, the District is saturated with federal government employees and government contractors. Ordinarily, a jury substantially composed of those connected to the federal government would raise no concerns vis-à-vis impartiality. In the instant case, however, Caldwell and his co-defendants have been repeatedly (and inaccurately) referred to as "anti-Government militants" or members of anti-Government "militias." Officials have issued "domestic terrorism" alarms and bulletins for the District in light of the Capitol incursion. A district jury would likely be filled with jurors predisposed to convict Caldwell based on the belief that he poses a danger to government employees in general, regardless of the facts presented in court.

D. **District residents have shown that their powers of intelligent, rational thinking are suspended when Trump is involved.**

The highly intelligent and thoughtful residents of the District, unfortunately, eschew intelligent and rational thinking when all matters "Trump" are at issue. Commentators have referred to this phenomena as "Trump Derangement Syndrome." Most notably, for nearly two years District residents overwhelmingly bought into the ludicrous conspiracy theory that Donald Trump colluded with Russian President Vladimir Putin to rig the 2016 election. District suicide hotlines literally crashed when the Mueller Report dropped, disproving crazy claims of Trump's secret Russian bank account, Putin's alleged video blackmail of Trump with Russian prostitutes, Trump's Russian backchannel through Deutsche Bank, and other objectively dubious claims. Tinfoil hats, however, are not exclusively worn periodically by the District's anti-Trump population. Tinfoil milliners, for example, were working around the clock during the Clinton and

Obama administrations when many highly intelligent, respected conservatives believed the equally ludicrous claims that, *inter alia*, the Clintons killed Vincent Foster and President Obama was born in Kenya. A generation of New England Republicans swore that President Roosevelt knew about Japanese plans to bomb Pearl Harbor in advance. The point is clear: Even the most sober-minded, intelligent, rational, and thoughtful people can believe the most absurd claims when they are made against individuals they disagree with politically.

The DC-based media and many District residents, moreover, without dispassionate thought and contemplation, have opposed every word and position Trump has taken, regardless of the merits. Recently, for example, strong evidence has come to light that COVID leaked, as Trump claimed more than a year ago, from a Chinese bioweapons lab in Wuhan, a claim that was reflexively scoffed at by those inside the Beltway. Similarly, District media and residents scoffed at Trump's praise of the drug hydroxychloroquine as a COVID therapeutic, believing that people were dying because of Trump's "lie." Studies, however, have confirmed what many Americans (who obtain their news from alternative sources) already knew: Trump was correct about hydroxychloroquine.[7] Yet

[7] See, e.g., C. Prodomos & T. Rumschlag, *Hydroxychloroquine is effective, and consistently so, when provided early, for COVID-19: a systemic review*, Oct. 5, 2020.

> This review found four important results. The first is that HCQ appears to be consistently effective for the treatment of COVID-19 when provided early in the course of disease in the outpatient setting, and it is generally more effective the earlier it is provided. The second is that overall, in most studies, HCQ exhibits efficacy against COVID-19. The third is that there are no unbiased studies showing a negative effect of HCQ treatment of

most District residents rejected Trump's claims, not because they thoroughly evaluated the merits, but because they despised the man who made them.

The issue isn't whether Trump was right about this issue or wrong about that issue (and there is no doubt that he has been wrong on issues). The (legal) issue is whether, in a hyper-political town populated overwhelmingly by hyper-political left-of-center residents, a jury will decide Caldwell's fate based on a dispassionate review of the facts, evidence, and the law? If past is prologue, Caldwell would likely face a District jury pool that, while highly intelligent and thoughtful, will be inclined to reach a decision based on their visceral hatred of Donald Trump and his supporters, and not on the facts.

Without a transfer of venue, Caldwell's jury will be overwhelmingly (or, perhaps, exclusively) composed of individuals who:

1) Hate Donald Trump;
2) Will hate Caldwell because he is a Trump supporter;
3) Will have nothing culturally in common with Caldwell;
4) Will be prejudiced by false claims that Caldwell is a "white supremacist";
5) Will presume that Caldwell has ties to "white supremacists" or "white nationalists";
6) Whose main news sources are almost exclusively left-of-center, DC-based press outlets, which have hardly provided fair and balance coverage of Caldwell;

COVID-19. The fourth is that HCQ appears to be safe for the treatment of COVID-19 when used responsibly.

https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7534595/.

7) Who will feel peer pressure from the local "cancel culture" to convict;

8) Who have been personally impacted by the events of January 6th, including by the shutdown of D.C., the military presence, and the "domestic terrorism" warnings;

9) Who were impacted by protests against Trump and his administration, or actually participated in those protests;

10) Who, if they acquitted a Trump supporter, would risk a backlash from their Trump-hating D.C. co-workers, neighbors, and friends.

Caldwell has a constitutional right to have a fair and impartial jury, which the District simply cannot provide him.

E. **Caldwell should be tried in the Western District of Virginia.**

For many reasons, the logical place to transfer this matter for trial is the Western District of Virginia ("WDVA"), Harrisonburg Division, Caldwell's home district. First, the Indictment alleges many acts that Caldwell engaged in occurred in the WDVA. Two of the four counts against Caldwell allegedly occurred in the WDVA. The "agreement" underlying the conspiracy count (Count 1) that the Government alleged occurred at Caldwell's Berryville, Va. home, where he allegedly communicated with Oath Keepers from his home computer. Caldwell's alleged "overt acts" of making hotel plans, recruiting co-defendants, and publishing Facebook posts mostly occurred in the WDVA. Additionally, the evidence tampering that Caldwell is charged with in Count 9 would have occurred in the WDVA at his home computer. In short, Caldwell's charges have strong ties to the WDVA.

The WDVA is more politically balanced with a potential jury pool that is far less partisan than a D.C. panel. A WDVA Virginia panel will also be culturally and ethnically diverse, as it stretches from northern Virginia down the Shenandoah Valley and includes James Madison University. While all potential jurors in the WDVA undoubtedly have heard about the Capitol Hill incident, jurors outside of the D.C. media market will have far less exposure to the non-stop biased and prejudicial press coverage as outlined *supra*. Additionally, since the Government and the Court have expressed concerns about Caldwell and other co-defendants being security risks if allowed to enter the District, a trial in Virginia will keep the defendants out of D.C., thus protecting the District from the defendants, and the defendants from anticipated D.C. protesters. Next, Caldwell intends on calling a number of witnesses in his defense, many of whom reside in the WDVA. Finally, a WDVA jury is far less likely to have been influenced by the incessant race-baiting spewing out of multiple quarters in the District.

F. **The Court should not wait for *voir dire* to order a transfer of venue.**

The Court should not wait until the *voir dire* process to order a transfer of venue in Caldwell's case. Because of the complexity of the instant case, this matter likely won't be scheduled for trial until well into 2022. A postponement caused by juror bias potentially exhibited at *voir dire* could result in Caldwell being tried in 2023.

G. Conclusion

WHEREFORE, Caldwell, having shown that any potential jury will presumptively be prejudiced against him, thus making it impossible for him to receive a

fair trial in the District, respectfully moves this Honorable Court to transfer venue to the Western District of Virginia, Harrisonburg Division, pursuant to the Fifth and Sixth Amendments and Federal Rule of Criminal Procedure 21(a).

Respectfully Submitted,

/s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of July, 2021, a copy of the foregoing Motion to Transfer Venue was electronically filed with the Clerk of the United States District Court using CM/ECF, with a notice of said filing to the following:

Counsel for the Government:

Office of the United States Attorney
555 4th Street, NW
Washington, DC 20001

/s/
David W. Fischer, Esq.