

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA, )  
 ) Criminal No. 4:15-CR-103  
 v. )  
 )  
 JESSE R. BENTON, )  
 JOHN M. TATE, and )  
 DIMITRIOS N. KESARI, )  
 )  
 Defendants. )

**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANT’S MOTION TO TRANSFER VENUE**

Pursuant to Federal Rule of Criminal Procedure 21(b), Defendant Jesse R. Benton, through undersigned counsel, respectfully moves this Court for an Order transferring this proceeding to federal district court in the District of Columbia. The allegations supporting the charges in the Indictment against Mr. Benton involve activity in a number of different states but the primary acts constituting the basis for the charges occurred in Maryland, Virginia, Texas, and the District of Columbia. Indeed, given the broad reach of jurisdiction under the federal statutes involved in the case, the Indictment could have been returned in any one of those states and the prosecutors did in fact take grand jury testimony in the District of Columbia, in addition to Iowa. Despite that the fact that the majority of the material witnesses live in and around the Washington, D.C. area, and that almost all of the acts constituting the alleged crime occurred outside of Iowa, the government still chose to return the Indictment against Mr. Benton and his co-defendants in Iowa. For the convenience of the parties involved in the case, and in particular the defendants and material witnesses, this Court should enter an Order transferring the instant case to the District of Columbia. In support of this motion, Mr. Benton states the following.

## I. BACKGROUND FACTS

### A. The Essential Charges of the Indictment

The Indictment against Mr. Benton alleges that he was involved in an agreement to falsify documents and reports to the Federal Elections Commission (“FEC”) in an effort to hide pays to then State Senator Kent Sorenson. *See generally*, Dkt. 3. The legality of the defendants’ actions is specifically tied to the Federal Election Campaign Act of 1971, in particular 52 U.S.C. § 30104(a)(1) and §30104(b)(5)(A), which requires political campaigns to report to the FEC campaign expenditures over a certain threshold level. Dkt 3 at 2, ¶10. It is alleged that Mr. Benton, with his co-defendants, caused the 2012 Ron Paul Presidential Campaign (“RPPC”) to falsely report payments to Mr. Sorenson as payments to a company named Interactive Communications Technology, Inc. (“ICT”). *Id.* at ¶15(b),(c),(d),(e).

The essential acts constituting this crime all occurred outside of Iowa and more specifically, most in the Washington, D.C. area:

- ICT is located in Hyattsville, Maryland which is less than 5 miles from the District of Columbia;
- The RPPC was headquartered in Springfield, Virginia which is approximately 10 miles from the District of Columbia;
- The invoices from Sorenson were sent via email to defendant Dimitri Kesari who resides in Leesburg, Virginia which is approximately 30 miles from the District of Columbia;
- Ms. Deana Watts, the former Assistant Treasurer for the RPPC resides in Klute, Texas, where she prepared and sent the allegedly false filings for the FEC;
- Ms. Lori Pyeatt, the former Treasurer for the RPPC resides in Klute, Texas;

- The alleged false reports were filed with the FEC which is located in Washington, D.C.;
- The RPPC sent payment to ICT's bank in College Park, Maryland; and
- ICT in turn paid Sorenson through that same bank in College Park, Maryland.

B. The Parties and Material Witnesses

In addition the fact that the acts constituting the alleged crime occurred within the Washington, D.C. area, the majority of the material witnesses, parties, and even counsel are located in the Washington, D.C. area. For example:

- Kesari and John Tate both live in northern Virginia, within 30 miles of the District of Columbia;
- Counsel for both Kesari and Tate are located in Alexandria, Virginia which is less than 5 miles from the District of Columbia;
- Counsel for Mr. Benton are located in Washington, D.C.;
- The prosecutors for the government, Messrs. Kravis and Pilger, are both located in Washington, D.C.;
- The Agents likely to testify from the Federal Bureau of Investigation ("FBI") at trial are all located in the Washington, D.C. area;
- Almost all of the material witnesses from the RPPC reside and work in the Washington, D.C. area;
- Sony Izon and Pavlo Kesari, likely government witnesses, are also located in the Washington, D.C. area (Hyattsville, Maryland); and
- The physical evidence associated with this case is also located in the Washington, D.C. with the related FBI Agents.

While Mr. Benton does not reside in Washington, D.C., he does operate a Washington, D.C. based consulting firm and has made frequent trips to Washington, D.C. in the past for work and to visit friends and family. The only witness material to the government's case located in Iowa is Sorenson. The purported basis for jurisdiction in Iowa would be found through the conspiracy charge of the Indictment and the allegation that Mr. Sorenson lives in Iowa and appeared in Iowa at a December 28, 2011, RPPC campaign event to publicly announce his support for the candidate. Dkt. 3 at ¶15(g). Based on the facts above and the reasons described below, this Court should transfer this case to the District of Columbia.

## II. ARGUMENT

This Court should order the instant case transferred to the federal court in the District of Columbia because a trial in Iowa would be unduly burdensome and unfair to Mr. Benton. Under Federal Rule of Criminal Procedure 21(b), this Court has the authority to transfer proceedings to the District of Columbia “for the convenience of the parties, any victim, and the witnesses, and in the interest of justice.” Fed. R. Crim. P. 21(b). Further, the determination that the convenience of the parties and the witnesses and the interests of justice require a transfer to another district is within the “sound discretion of the district court.” *United States v. Green*, 983 F.2d 100, 103 (8th Cir.1992) (citing *United States v. Phillips*, 433 F.2d 1364, 1368 (8th Cir.1970)). Courts in the Eighth Circuit are “guided by the enumeration of factors which were considered in *Platt v. Minnesota Mining & Manufacturing Co.*, 376 U.S. 240, 243-244, 84 S.Ct. 769, 771, (1964): (1) location of corporate defendant; (2) location of possible witnesses; (3) location of events likely to be in issue; (4) location of documents and records likely to be involved; (5) disruption of defendant's business unless the case is transferred; (6) expense to the parties; (7) location of counsel; (8) relative

accessibility of place of trial; (9) docket condition of each district or division involved; and (10) any other special elements which might affect the transfer.” *United States v. McGregor*, 503 F.2d 1167, 1169-70 (8th Cir. 1974). These factors also apply to individual, as well as corporate, defendants. *See United States v. Moncrieffe*, 485 F. Supp. 2d 1059, 1061 (S.D. Iowa 2007). The fact that the government decided to bring charges in a particular district does *not* create any presumption that the case should be tried in that district. *United States v. Negron*, No. 08-CR-501, 2008 WL 5272056, at \*2 (D.N.J. Dec. 6, 2008); *see also United States v. Coffee*, 113 F. Supp. 2d 751, 753 (E.D. Pa. 2000); 2 Charles Alan Wright & Peter J. Henning, *Federal Practice & Procedure* § 345 at 446-47 (4th ed. 2009). Rather, “[b]ecause convenience is the goal a court must look at all the circumstances” to decide whether transfer is warranted under Rule 21(b). *Negron*, 2008 WL 5272056 at \*2.

Of the factors considered by courts, the location of defendants and their counsel, weighs most heavily in favor of transfer because of the undue burden defending a case in a foreign jurisdiction can put on a defendant. *United States v. Benjamin*, 623 F. Supp. 1204 (D.D.C. 1985). In *Benjamin*, the nine defendants were charged in a 22-count indictment of conspiracy, obstruction, and perjury, including making false statements to IRS agents in Washington, D.C. 623 F. Supp. at 1206. The indictment contained charges based on federal law and 15 counts based on the laws of the District of Columbia. *Id.* The case was brought in federal court in the District of Columbia and the defendants moved to have the entire case transferred, even the D.C.-based offenses under “the policy of avoiding successive trials on charges that substantially overlap,” for the convenience of the defendants to the Eastern District of California. *Id.* at 1207. Defendants argued the logistical and financial problems with trying a case in Washington, D.C. when they and their counsel resided in California and the expense to fly back and forth to visit family

during the trial. *Id.* at 1207-8. In opposition the government argued that the conspiracy count and all the essential acts were committed in D.C., the government would be inconvenienced by having to try the case in trial when they were based in D.C., and that the nature of the defendants' conduct was so closely linked to the judicial process in D.C. that it must be tried in that jurisdiction. *Id.* at 1208-9. Balancing the *Platt* factors, the court found that the weight of the factors, specifically "the convenience of the parties, ... the witnesses, and the interests of justice" favored the transfer of the case to California. *Id.* at 1212. In particular, the court noted that the prosecution grew out of a tax enforcement proceeding in California, that 6 of the defendants' counsel practiced outside of D.C. (five from California and one from Arizona), that the defendants would be required to stand trial miles away from their families and homes, and that, unlike defendants, the government is "ubiquitous" and is expected to travel across the country for trial. *Id.*; see also *United States v. Arnoff*, 463 F. Supp. 454, 458 (S.D.N.Y. 1978) (granting motion to transfer only one co-defendant, noting trial in the inconvenient forum would force the defendant to be away from his children because "[h]e would be unable to afford to bring his family with him . . . ."); *United States v. Radley*, 558 F. Supp. 2d 865, 877-78 (N.D. Ill. 2008) (granting transfer sought by four defendants to a district where three of the defendants lived (so they would not be separated from their families and young children) and where many of the witnesses lived).

Elaborating on the hardship on defendants, the court noted that in contrast to the government lawyers who have offices all over the country, the defendants' lawyers would be forced to "establish their own local base" with no indication that such efforts "could match that available to the government." *Benjamin*, 623 F.Supp. at 1213. Moreover, the court held that "travel and lodging expenses [were] [] obvious factors to be considered" but not conclusive

unless “unbearable.” *Id.* at 1214-15 citing *United States v. Haley*, 504 F. Supp. 1124, 1128-29 (E.D.Pa 1981); *United States v. Baltimore & Ohio R.R. Co.*, 538 F. Supp. 200, 205 (D.D.C. 1982); *see also United States v. Ferguson*, 432 F. Supp. 2d 559, 564 (E.D. Va. 2006) (granting transfer to district where most witnesses were located and weighing heavily the cost of mounting a defense in the original forum in favor of transfer because defendants would “be forced to absorb significant out-of-pocket costs” for travel and lodging during trial compared to the government which, “for all practical purposes, [has] unlimited financial resources to bring to bear. Unlike the defendants, the Government can, and does, mint money.”). While the government argued that a transfer to California would impose undue strain on that district, the court found that although a district might have a busy docket, the Speedy Trial Act presumes that a court will rearrange its docket to accommodate significant cases. *Benjamin*, 623 F. Supp. at 1215. Accordingly the court ordered the entire case transferred to the Eastern District of California. *Id.* at 1217.

A balancing of the *Platt* factors weighs heavily in favor of transferring the instant case to the District of Columbia. Much like in *Benjamin*, all the attorneys in the instant case reside in and practice in the Washington, D.C. area. Further, two of the three defendants live in the D.C. area and would be separated from their families and support systems throughout the pendency of the trial if it were to proceed in Iowa. Mr. Benton, while residing in Kentucky, maintains an office in Washington, D.C. and has friends and family in the D.C. area such that he would be able to bring his wife and young daughter for the trial if it were held in D.C. Much like the defendants in *Radley*, if tried in Iowa, Mr. Benton would be forced to stand trial without the support of his family. The sheer fact that all three defendants and their six defense counsel would have to relocate to Iowa for trial, set-up a local base from which to mount their defense,

and the substantial costs incurred for these efforts (not including travel<sup>1</sup> and lodging) weigh heavily in favor of transfer to D.C. This is not a case in which an Iowa defendant has chosen out-of-state counsel and is attempting to frivolously transfer districts. Based on a filing of a formal FEC Complaint against the 2012 RPPC and allegations related to the FEC, Mr. Benton's choice of counsel was guided by counsel's previous experience with the federal government and reputation in Washington, D.C. The fact that the government chose to indict the case against Mr. Benton in Iowa should not outweigh the tremendous financial burden to Mr. Benton (who was forced to resign from his public position with Rand Paul's Presidential Political Action Campaign due to the indictment) who does not have steady income.

Additionally, similar to *Baltimore & Ohio R.R.*, the majority of the witnesses for both the government and the defendants are located in the Washington, D.C. area. Almost all the essential witnesses in the case live in the D.C. area – Sonny Izon, Pavlo Kesari, Doug Stafford, Mike Rothfeld, Fernando Cortez, and even the FBI case agents. In addition, the events which are *indispensable* to the government's case – all occurred in the Washington, D.C. area: the 2012 RPPC report was filed with the FEC, *in D.C.*; the allegedly false invoice which was sent to Fernando Cortez for payment and inclusion on the 2012 RPPC REC filing, was created *in the D.C. area*; the 2012 RPPC paid ICT *in the D.C. area*; ICT utilized its bank *in the D.C. area* to pay Sorenson. Presumably the main government witness which would be forced to travel to D.C. would only be Sorenson. And unlike the defendants, the government has unlimited resources not only to locate witnesses, but also to pay for and compel them to testify at trial. The factor of “expenses” clearly weighs in Mr. Benton's favor.

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<sup>1</sup> It should be noted that there are three airports within approximately 40 miles of Washington, D.C. while Des Moines only has one airport. Not only would the airfare be significantly less for Mr. Benton, alone or with his family, to fly to D.C. as compared to paying for two attorneys and himself to fly to Iowa, D.C. offers more flights and flexibility.



Since most of the government's production of discovery thus far has been copies of electronic documents, that factor is not significant. To the extent that Mr. Benton might be able to conduct business activity prior to and pending a jury verdict, his consulting firm is based in Washington, D.C. but could not work in Iowa due to a lack of available resources. Finally, with regards to potential docket congestion in D.C., as the court in *Benjamin* noted, the district court in D.C. has a policy that the scheduling of criminal trials take precedent over other cases pursuant to the Speedy Trial Act.<sup>2</sup> Accordingly, there is no significant concern that a transfer of the instant case would overburden the docket in D.C. and this Court should grant Mr. Benton's motion to transfer.

### III. CONCLUSION

For the foregoing reasons, Mr. Benton respectfully moves this court for an order transferring the instant case to the district court in the District of Columbia for the convenience of the parties and to avoid undue financial burden to Mr. Benton.

Dated: September 4, 2015

Respectfully Submitted by,

/s/Roscoe C. Howard, Jr.

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<sup>2</sup> See <http://www.dcd.uscourts.gov/dcd/sites/dcd/files/Speedy-Trial-Plan2010.pdf> (last accessed on Sept. 3, 2015).

**CERTIFICATE OF SERVICE**

I, Roscoe C. Howard, Jr. hereby certify that a true and correct copy of the foregoing *Notice of Motion to Transfer Venue* and *Memorandum of Law in Support* have been served on all counsel of record via ECF.

/s/Roscoe C. Howard, Jr.  
Roscoe C. Howard, Jr.

Dated: September 4, 2015