

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

UNITED STATES OF AMERICA,)
) Criminal No. 4:15-CR-103-JAJ-HCA
 v.)
) GOVERNMENT’S OPPOSITION TO
 JESSE R. BENTON,) DEFENDANT BENTON’S MOTION
 JOHN F. TATE, and) TO TRANSFER VENUE
 DIMITRIOS N. KESARI,)
)
 Defendants.)

The United States of America, by and through undersigned counsel, respectfully submits its opposition to defendant Jesse Benton’s motion to “transfer venue” in this case to the District of Columbia. Most of the events likely to be in issue at trial occurred in Iowa, where this case is properly venued under the Constitution, and this case is proceeding expeditiously on this Court’s docket. Those considerations greatly outweigh any greater convenience of a trial in the District of the District of Columbia as opposed to the Southern District of Iowa or elsewhere.

FACTUAL BACKGROUND

A. The Indictment

On July 30, 2015, the grand jury returned an indictment charging defendants Jesse Benton, John Tate, and Dimitri Kesari with conspiracy, causing false records, causing false campaign expenditure reports, false statements, and obstruction of justice. As alleged in the indictment, these charges arise out of a conspiracy among the defendants, who were senior officials in the Ron Paul 2012 Presidential Campaign Committee, Inc. (“RPPC”), to conceal payments from the RPPC to then-Iowa State Senator Kent Sorenson.

In the spring of 2011, Sorenson endorsed then-U.S. Representative Michele Bachmann for the Office of President of the United States and became Rep. Bachmann’s Iowa campaign

chair. Beginning in the fall of 2011, the defendants engaged in a concerted effort to persuade Sorenson to defect from the Bachmann campaign and endorse then-U.S. Representative Ron Paul. That effort included offers to pay Sorenson. Indeed, on the evening of December 26, 2011, Kesari met with Sorenson and his wife and gave them a \$25,000 check drawn on the account of Designer Goldsmiths, Inc., a jewelry company belonging to Kesari's wife, as inducement for Sorenson to endorse Rep. Paul. On December 28, 2011, just days before the Iowa caucuses, Sorenson appeared at a campaign event held by the RPPC and endorsed Rep. Paul for president. The next day, Rep. Bachmann went on national television and accused the RPPC of paying Sorenson for his endorsement. Sorenson and the RPPC denied that allegation, and specifically stated that the RPPC's FEC filings would prove that Sorenson received no money from the RPPC.

In fact, the defendants had agreed with Sorenson that he *would* be paid by the RPPC. The defendants also agreed with Sorenson that those payments would be disguised on the campaign's FEC reports to avoid the public disclosure that Sorenson was paid by the campaign, and therefore that the statements made by Sorenson and the RPPC in response to Rep. Bachmann's allegation were untrue. To effectuate this scheme, defendant Kesari arranged for a film production company called Interaction Communication Technology ("ICT") to act as a pass-through entity for the payments to Sorenson. Each month, Sorenson's political consulting company, Grassroots Strategy Inc. ("GSI"), submitted an invoice to ICT, which then sent its own invoice for Sorenson's fee plus its own commission to the RPPC. The defendants approved the ICT invoices and submitted them to campaign officials for payment and for recording in the campaign records, often by email. The defendants created and executed this plan knowing that the campaign's FEC reports would show only the payments to ICT as "audio/visual expenses"

and therefore neither the media nor the public nor Representative Paul himself would know that, contrary to the public pronouncements of both the senator and the campaign, the RPPC did pay Senator Sorenson after he endorsed Representative Paul.

In this manner, the RPPC managed to pay Sorenson \$73,000 (an initial payment of \$25,000 plus \$8,000 per month from January 2012 to June 2012) without having Sorenson's name appear on the campaign's FEC filings. During that time, Sorenson did very little work for the RPPC, and ICT did no work for the RPPC at all, let alone the specified "audio/visual" work.

The defendants' efforts to persuade Sorenson to endorse Rep. Paul for president largely took place in Iowa, where Sorenson was located and where Kesari was doing work for the RPPC in the fall of 2011. The defendants' first efforts to pay Sorenson, the \$25,000 check that Kesari gave Sorenson and his wife on the evening of December 26, 2011, occurred in Iowa. Sorenson's actual endorsement of Rep. Paul also occurred in Iowa, as did his conversations with the defendants regarding his compensation as part of the endorsement agreement. When Rep. Bachmann accused the RPPC of paying Sorenson for his endorsement on national television and Sorenson responded with his denial referencing the FEC filings, all of the relevant parties—Rep. Bachmann, Sorenson, and all three defendants—were located in Iowa preparing for the upcoming Caucuses. And when Sorenson prepared the bogus invoices to ICT, and later received the payments from ICT through his Iowa company, he was located in Iowa.

ARGUMENT

Benton's motion to transfer this case to the District of Columbia should be denied for two reasons. First, venue is not proper for all charges in the indictment in the District of Columbia. Second, even if venue were proper in the District of Columbia, the factors to be considered by the Court in ruling on a transfer motion weigh heavily in favor of keeping the case in Iowa. The

Southern District of Iowa is the location where the majority of the events likely to be in issue occurred, the District of Columbia has no particular interest in this case, and the case is proceeding expeditiously on this Court's docket. The only factor weighing in favor of transfer is the inconvenience to Benton's counsel of having to try this case in Iowa, and that factor should not be dispositive.

I. Venue Is Not Proper in the District of Columbia.

The Constitution provides that "the Trial of all Crimes...shall be held in the State where the said Crimes shall have been Committed." U.S. Const. Art. III, § 2. While Federal Rule of Criminal Procedure 21(b) permits the transfer of a case based on the interests of justice, the transfer must be to a jurisdiction with proper venue, as a rule of criminal procedure cannot abrogate a constitutional guarantee. *See* Fed. R. Crim. P. 21 Advisory Committee Note 2 ("The second [kind of motion authorized by Rule 21] is a motion for a change of venue in cases involving an offense alleged to have been committed in more than one district or division. In such cases the court, on the defendant's motion, will be authorized to transfer the case to another district or division in which the commission of the offense is charged, if the court is satisfied that it is in the interest of justice to do so.").

In this case, the indictment alleges that all of the charges occurred in whole or in part in the Southern District of Iowa, but the indictment includes two charges that were not committed in the District of Columbia. Count Five charges Benton with making false statements to FBI Special Agents in the Southern District of Iowa. Count Six charges Kesari with obstructing justice in the Southern District of Iowa. Neither of these crimes were committed even in part in the District of Columbia, and therefore the District of Columbia is not a proper venue for these charges.

II. The Interests of Justice Do Not Warrant Transfer.

In a federal criminal prosecution, “the government’s choice of forum is ordinarily to be respected.” *United States v. McManus*, 535 F.2d 460, 463 (8th Cir. 1976). However, Federal Rule of Criminal Procedure 21(b) authorizes the transfer of a case upon the defendant’s motion: “For the convenience of parties and witnesses, and in the interest of justice, the court upon motion of the defendant may transfer the proceeding as to him or any one or more of the counts thereof to another district.” In considering a motion to transfer under Rule 21(b), the Court is guided by the following factors: “(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 the 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, 1170 (8th Cir. 1974) (quoting *Platt v. Minnesota Mining & Mfg. Co.*, 376 U.S. 240, 243-44 (1964)). The defendant bears the burden of justifying a transfer under Rule 21(b). *United States v. Moncrieffe*, 485 F. Supp. 2d 1059, 1061 (S.D. Ia. 2007).

1. *Location of the defendants.* Benton, the proponent of this motion, lives in Kentucky. Mot. To Transfer at 7. Therefore, he will have to travel whether the case is tried in Iowa or Washington D.C. Accordingly, this factor does not favor either location. (Moreover, even if the law and facts somehow warranted removing this case from an Iowa Court and jury, the two remaining defendants live in the Eastern District of Virginia, making that District more logistically convenient to more parties.)

2. *Location of possible witnesses.* Several witnesses in this case, including Kent Sorenson, Jeanine Sorenson, and Christopher Dorr, live in Iowa. Three other witnesses—Lori Pyeatt, Deana Watts and Rep. Ron Paul—live in Texas. Three non-law-enforcement witnesses—Noel Izon, Pavlo Kesari, and Fernando Cortes—live in the Washington D.C. area. Because the witnesses in this case are scattered around the country, this factor does not favor either location. *See Moncrieffe*, 485 F. Supp. 2d at 1062 (denying motion to transfer under Rule 21(b) and reasoning that “regardless of where the trial in this case occurs, some witnesses from each side will have to travel”). For witnesses that have to travel to Iowa for trial, Federal Rule of Criminal Procedure 17(b) and 18 U.S.C. § 1821(c)(1) provide for the payment of defense witnesses under subpoena when appropriate.

3. *Location of events likely to be in issue.* Many of the events likely to be in issue in this case occurred in Iowa. It was in Iowa that the defendants undertook their courtship of Sorenson in November and December 2011. *See* Indict. ¶ 16(b). It was in Iowa that Kesari first attempted to pay Sorenson, by giving him a \$25,000 check payable to his wife’s jewelry company Designer Goldsmiths Inc. on December 26, 2011. *Id.* ¶ 16(f). It was in Iowa that the defendants eventually persuaded Sorenson to endorse Ron Paul, based in part on the promise of future payment. *Id.* ¶ 16(g). It was in Iowa that the defendants first began making arrangements for the RPPC to pay Sorenson. *Id.* ¶ 16(h). It was in Iowa that Rep. Bachmann made her allegation that Sorenson had been paid for his endorsement. *Id.* ¶ 16(i). It was in Iowa that Sorenson issued his denial of that allegation, specifically referencing the campaign’s FEC reports. *Id.* ¶ 16(i), (n). It was in Iowa that the defendants reached their agreement that Sorenson would be paid in secret notwithstanding his denials. *Id.* ¶ 16(o). It was in Iowa that Sorenson received the payments from the RPPC. The government expects that the defense will dispute

many of these allegations, for example by denying that they were really interested in obtaining Sorenson's endorsement and by denying that they arranged for Senator Sorenson to be paid covertly. (The other events likely to be in issue, including the emails of the defendants forwarding and approving the ICT invoices, occurred while the defendants were traveling with the campaign and therefore their location does not favor either Iowa or Washington D.C.)

To be sure, the RPPC filed its FEC reports with the Commission in Washington D.C., but those reports, published online nationally, are unlikely to be contested by the parties. Benton cites (at 8) several other events that occurred in the "D.C. area," such as the creation and payment of the ICT invoices. But these events did not occur in the District of Columbia itself, and so the transfer of the case to that district would not site the trial in the actual location of these events. The trial could as reasonably be located in the Eastern District of Virginia, where campaign staff operated in the course of conduct generating payments to Sorenson, or in the Southern District of Texas, where campaign staff finalized FEC submissions.

The events most likely to be in issue happened in Iowa, and this factor therefore weighs heavily in favor of keeping the trial in the Southern District of Iowa. *See Moncrieffe*, 485 F. Supp. 2d at 1061-62 (denying motion to transfer under Rule 21(b) in large part because many events relating to the conspiracy occurred in Iowa); *United States v. Kanner*, 2008 WL 2663414, at *6 (N.D. Ia. June 27, 2008) (denying motion to transfer and reasoning that "the importance of the Iowa 'events' in this case should not be minimized"); *United States v. Lewis*, 2006 WL 1579855, at *14 (D. Minn. June 1, 2006) (denying motion to transfer notwithstanding that several witnesses would have to travel from Utah to Minnesota for the trial, based in part on the fact that "much of the fraudulent activity charged is alleged to have occurred in Minnesota").

4. *Location of documents and records likely to be involved.* The documents and records related to this case have been produced to the defendants in electronic format and so their location during trial is not relevant.

5. *Disruption of the defendant's business unless the case is transferred.* Benton represents that he has resigned from his job (Mot. To Transfer at 8) and therefore this factor does not favor either location.

6. *Expense to the parties.* Benton's motion claims (at 7-8) that he will incur "substantial costs" if the trial is held in Iowa, but he does not describe those costs, other than travel and lodging, which he will incur whether the case is tried in Iowa or Washington D.C., and the costs to his counsel, which are subsumed within factor #7.

7. *Location of counsel.* Two defendants' counsel are located in the Eastern District of Virginia – where defendant Tate's counsel work within walking distance of the Alexandria Division. Defendant Benton's counsel are located in Washington D.C. Government counsel are based in Washington D.C. but practice nationally in available federal offices, including the United States Attorneys' Offices in the Southern District of Iowa and the Eastern District of Virginia, the latter of which is located within the Alexandria Division Courthouse. This factor weighs in favor of the Eastern District of Virginia.

8. *Relative accessibility of place of trial.* Both Des Moines, Iowa, and Washington D.C., are highly accessible locations near major airports. This factor therefore does not weigh in favor of either location.

9. *Docket conditions of each district involved.* This case has proceeded expeditiously in the Southern District of Iowa since indictment. The parties have filed numerous pleadings with this Court, this Court has already resolved several preliminary issues, and this

case is set for trial on October 5, 2015, in the Southern District of Iowa. This factor weighs in favor of the Southern District of Iowa. *See Moncrieffe*, 485 F. Supp. 2d at 1061-62 (denying transfer motion under Rule 21(b) and noting that “the case is on the docket and is proceeding relatively quickly” in Iowa).

10. *Other special elements which might affect transfer.* Benton’s motion cites no other factors supporting transfer, and the government is aware of none.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2015, I electronically filed the foregoing with the Clerk of Court using the CM ECF system. I hereby certify that a copy of this document was served on the parties or attorneys of record by:

U.S. Mail Fax Hand Delivery

X ECF/Electronic filing Other means;

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