PETITIONER'S APPENDIX

TABLE OF CONTENTS TO THE APPENDIX

In the
United States Court of Appeals
For the Second Circuit

August Term, 2023

(Argued: February 16, 2024 Decided: August 8, 2024

Docket No. 23-6055

UNITED STATES OF AMERICA,

Appellee,

–v.–

ELLVA SLAUGHTER,

Defendant-Appellant.

Before: JACOBS, ROBINSON, and NATHAN, *Circuit Judges*.

Defendant-Appellant Ellva Slaughter appeals from a January 13, 2023 judgment of the United States District Court for the Southern District of New York (Failla, *J.*) convicting him of illegally possessing a firearm while knowing he had previously been convicted of a felony, in violation of 18 U.S.C. § 922(g)(1).

On appeal, Slaughter challenges the district court's denial of his motion to dismiss the indictment on the ground that the SDNY's jury

selection plan systematically underrepresents Black and Hispanic or Latino people in violation of his right to a grand jury drawn from a fair cross-section of the community under the Sixth Amendment and the Jury Selection and Service Act of 1968. The district court assumed without deciding that the underrepresentation of Black and Hispanic or Latino people on SDNY venires is significant, but denied Slaughter's motion because he failed to establish the underrepresentation is due to systematic exclusion in the District's jury selection process.

Applying the framework set forth in *Duren v. Missouri*, 439 U.S. 357 (1979), we assume without deciding that the underrepresentation of Black and Hispanic or Latino people on SDNY venires is significant, but conclude that Slaughter has not met his burden of proving systematic exclusion. We therefore **AFFIRM**.

DANIELLE SASSOON (Matthew Weinberg & Stephen J. Ritchin, *on the brief*) *for* Damian Williams, United States Attorney for the Southern District of New York, NY.

EDWARD S. ZAS, Federal Defenders of New York, Inc., New York, NY, *for Defendant-Appellant*.

ROBINSON, *Circuit Judge*:

Defendant-Appellant Ellva Slaughter appeals from a January 13, 2023 judgment of the United States District Court for the Southern District of New York (Failla, *J.*) convicting him of illegally possessing a firearm while knowing he had previously been convicted of a felony, in violation of 18 U.S.C. § 922(g)(1).

On appeal, Slaughter challenges the district court's denial of his motion to dismiss the indictment on the ground that the SDNY's jury selection plan systematically underrepresents Black and Hispanic or Latino people in violation of his right to a grand jury drawn from a fair cross-section of the community under the Sixth Amendment and the Jury Selection and Service Act of 1968. The district court assumed without deciding that the underrepresentation of Black and Hispanic or Latino people on SDNY venires is significant, but denied Slaughter's motion on the ground that he failed to establish the underrepresentation is due to systematic exclusion in the District's jury selection process.

Applying the framework set forth in *Duren v. Missouri*, 439 U.S. 357 (1979), we assume without deciding that the underrepresentation of Black and Hispanic or Latino people on SDNY venires is significant, but conclude that Slaughter has not met his burden of proving systematic exclusion. We therefore **AFFIRM**.

BACKGROUND

In 2021, a grand jury in the Southern District of New York in Manhattan charged Ellva Slaughter with one count of illegally possessing a firearm while knowing he had previously been convicted of a felony, in violation of 18 U.S.C. § 922(g)(1).

Slaughter moved to dismiss the indictment, arguing that the SDNY's jury selection plan systematically underrepresents Black and Hispanic or Latino people in violation of his right to a grand jury drawn from a fair cross-section of the community under the Sixth Amendment and the Jury Selection and Service Act of 1968 (the "JSSA"), 28 U.S.C. § 1861, *et seq*.[1]

I. The SDNY's Jury Selection Plan

The JSSA requires each federal district court to "devise and place into operation a written plan for random selection of grand and petit jurors." 28 U.S.C. § 1863(a). The plan must be approved by a reviewing panel consisting of (1) members of the judicial council of the circuit and (2) either the chief judge or another active judge of the district whose plan is being reviewed. *Id.* This panel reviews the plan to ensure it complies with the provisions of the JSSA. *Id.* A district may modify its plan at any time at the direction of the reviewing panel or on its own initiative, subject to approval by the panel. *Id.*

The SDNY adopted its first jury selection plan in accordance with the JSSA on July 26, 1983. Since then, the SDNY has amended its plan eight times with the

[1] Slaughter also invoked his right to equal protection under the Fifth Amendment in challenging the jury selection process, but he did not devote any argument to this issue in his briefs before the district court or this Court. Accordingly, we deem his Fifth Amendment challenge abandoned. *See United States v. Joyner*, 313 F.3d 40, 44 (2d Cir. 2002) ("[A]n argument not raised on appeal is deemed abandoned . . . .").

approval of the reviewing panel: on January 20, 1984; December 15, 1988; June 27, 1996; June 24, 1999; November 29, 2000; March 20, 2002; January 29, 2009; and September 27, 2023.

At issue here is the January 29, 2009 Amended Plan for the Random Selection of Grand and Petit Jurors (the "Plan"). The Plan uses voter registration lists as the exclusive source of names for prospective jurors in the SDNY, omitting inactive voters.[2] The process begins with the Clerk of Court randomly and proportionately selecting from the voter registration lists of each county a number

[2] The JSSA expressly approves of voter registration lists as a source of names for prospective jurors, and provides that a district's plan "shall prescribe some other source or sources of names in addition to voter lists where necessary to foster the policy and protect the rights secured by sections 1861 and 1862." 28 U.S.C. § 1863(b)(2). The other districts in this Circuit compile jury lists from numerous sources in addition to voter registration lists. *See* United States District Court for the Eastern District of New York Jury Selection Plan (as amended Jan. 31, 2023), https://img.nyed.uscourts.gov/files/local_rules/juryplan.pdf [https://perma.cc/ZHJ3-ETW4] (voter registration lists and DMV records); United States District Court for the Western District of New York Jury Selection Plan (as amended Apr. 30, 2018), https://www.nywd.uscourts.gov/sites/nywd/files/2018%20Jury%20Plan%20-%20FINAL.pdf [https://perma.cc/S6J9-VHCL] (voter registration lists, DMV records, records from the Department of Taxation and Finance, records from the Department of Labor, and social services records); United States District Court for the Northern District of New York Jury Selection Plan (as amended Nov. 9, 2021), https://www.nynd.uscourts.gov/sites/nynd/files/general-ordes/GO24_5.pdf [https://perma.cc/FQP9-TZYB] (voter registration lists, DMV records, and records from the Department of Taxation and Finance); United States District Court for the District of Connecticut Jury Selection Plan (as amended Apr. 17, 2023), https://www.ctd.uscourts.gov/sites/default/files/District-of-Connecticut-Jury-Plan.pdf [https://perma.cc/M55S-95FM] (voter registration lists, DMV records, and records from the Department of Revenue Services); United States District Court for the District of Vermont Jury Selection Plan (as amended Mar. 27, 2019), https://www.vtd.uscourts.gov/sites/vtd/files/JuryPlan.pdf [https://perma.cc/W8RG-EVNT] (voter registration lists and DMV records).

of prospective jurors deemed sufficient to cover a four-year period. From these names, the District constructs two "master" jury wheels: (1) the Manhattan Master Wheel, containing active voters from New York, Bronx, Westchester, Putnam, and Rockland Counties; and (2) the White Plains Master Wheel, containing active voters from Westchester, Putnam, Rockland, Orange, Sullivan, and Dutchess Counties. The District empties and refills the Master Wheels once every four years.

At least once a year, the Clerk of Court randomly selects names from the Master Wheels to meet the anticipated demand for grand and petit jurors over the next six months. The District sends these individuals questionnaires regarding their qualifications to sit as jurors, such as whether they understand English and whether a mental or physical impairment prevents them from serving. Prospective jurors must complete and return their questionnaire within ten days. If a person does not respond or their questionnaire is returned as undeliverable, the SDNY does not follow up.

Those who return the questionnaire and are otherwise qualified to serve fill the "qualified" jury wheels: the Manhattan Qualified Wheel and the White Plains

Qualified Wheel.[3] The Qualified Wheels must contain at least 500 names at all times. It is from these Qualified Wheels that the Clerk of Court periodically and randomly selects individuals to summon for service as grand or petit jurors.

Effective October 5, 2023—after the indictment at issue in this case—the SDNY amended its plan, reducing the interval for refilling the master jury wheels from four to two years. Other than a few non-substantive updates, the plan remains otherwise unchanged from its 2009 version.

II. Slaughter's Motion to Dismiss the Indictment

Slaughter argued that the Plan systematically underrepresents Black and Hispanic or Latino people in violation of his constitutional and statutory rights to a grand jury selected from a fair cross-section of the community. His challenge followed the framework set forth in *Duren v. Missouri*, 439 U.S. 357 (1979).

First, Slaughter asserted—and the government did not contest—that Black and Hispanic or Latino people are distinctive groups in the community. Second, he submitted an expert report showing, among other things, that while Black

[3] The Qualified Wheels contain the same county breakdowns as the Master Wheels. This is the stage of the process where the District accounts for the three overlapping counties: Westchester, Putnam, and Rockland. According to the Plan, jurors drawn for service from Westchester, Putnam, and Rockland Counties shall be "divided between the Manhattan and White Plains Qualified Wheels." App'x 43. The division of jurors from each of those counties "shall reasonably reflect the relative number of registered voters in each county within the respective Master Jury Wheels." *Id.*

people comprise 21.19% of the jury eligible population in the SDNY, only 16.08% of the people on the Manhattan Qualified Wheel are Black. Likewise, while Hispanic or Latino[4] people comprise 28.44% of the relevant population, only 19.41% of those on the Manhattan Qualified Wheel are Hispanic or Latino. The government's expert presented similar figures. Based on these and other statistics, Slaughter argued that Black and Hispanic or Latino people are significantly underrepresented in SDNY venires.

Third and finally, Slaughter alleged that the underrepresentation is the result of systematic exclusion in the SDNY's jury selection process. He argued that the persistence of disparities over time, standing alone, demonstrates that underrepresentation is due to systematic exclusion rather than external forces outside the SDNY's control. Additionally, Slaughter's expert identified numerous aspects of the SDNY's Jury Selection Plan as "systematic factors of under-representation," App'x 58, three of which Slaughter continues to press on appeal: (1) reliance on voter registration lists as the exclusive source of names for

[4] The parties' experts recognize Hispanic and Latino people as distinct groups, although they often refer to the groups collectively as "Hispanic." The US Census Bureau data relied upon by each expert uses "Hispanic or Latino" to refer to "a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race." *Why We Ask Questions About…Hispanic or Latino Origin*, United States Census Bureau (last accessed Apr. 11, 2024), https://www.census.gov/acs/www/about/why-we-ask-each-question/ethnicity/ [https://perma.cc/H5UN-FK42]. Because the parties' experts identified the relevant demographic group as including Hispanic or Latino people, we do the same throughout this opinion.

prospective jurors, (2) updating the Master Wheels only once every four years, and (3) refusal to follow up on jury qualification questionnaires that are not returned or returned as undeliverable. Slaughter's expert asserted that each of these factors causes underrepresentation of Black and Hispanic or Latino people in SDNY venires, although he provided scant data to back that up.

The government denied the significance of the disparities and rejected Slaughter's argument that persistence of disparities over time may suffice to show systematic underrepresentation. It also countered Slaughter's expert report with its own, arguing that any underrepresentation is not systematic but the product of factors external to the jury selection process.

The district court denied Slaughter's motion in an oral ruling. The court assumed without deciding that Slaughter "met his burden of showing substantial or significant underrepresentation . . . ." App'x 163. However, it rejected Slaughter's argument that the disparities are the result of systematic exclusion in the SDNY's jury selection process, finding: (1) Slaughter's expert put forth no evidence that the identified practices actually contribute to disparities; (2) "most of [the challenged] practices have been specifically authorized by the Second Circuit"; and (3) any disparities are due to external forces outside the SDNY's control, like people moving, aging, or deciding not to respond to qualification

questionnaires. *Id.* at 165–68. The court likewise rejected Slaughter's assertion that the persistence of disparities over time, standing alone, may prove systematic exclusion. Substantially for these reasons, the court concluded that Slaughter had failed to establish a constitutional or statutory fair cross-section violation.

III. Remaining Proceedings

Following a bench trial on stipulated facts, the court found Slaughter guilty of violating 18 U.S.C. § 922(g)(1) and sentenced him to time served plus one month. In this timely appeal, he challenges only the district court's ruling on his motion to dismiss the indictment. Slaughter completed his term of imprisonment on February 6, 2024, and was thereafter deported to Jamaica.[5]

DISCUSSION

I. Standard of Review

This fair cross-section challenge presents a mixed question of law and fact. We review the district court's factual findings for clear error and its legal

[5] The government moves to dismiss this appeal as moot on the ground that Slaughter has completed the carceral portion of his sentence, has been removed from the country, and, on the basis of prior unrelated convictions, is inadmissible. We deny the motion because the appeal is not moot. Here, Slaughter remains subject to the special assessment fee. *Kassir v. United States*, 3 F.4th 556, 566 (2d Cir. 2021) ("A special assessment fee is a sufficient basis for a defendant to maintain a concrete stake in challenging a conviction on direct appeal."). Slaughter's removal also did not relieve him of his term of supervised release. *United States v. Roccisano*, 673 F.3d 153, 157 (2d Cir. 2012). Slaughter is thus entitled to a ruling on the merits of his challenge. *See United States v. Atilla*, 966 F.3d 118, 123 (2d Cir. 2020) (direct appeal challenge to conviction not moot where defendant had completed carceral sentence and been removed).

conclusions without deference. *United States v. Selioutsky*, 409 F.3d 114, 119 (2d Cir. 2005) ("We review issues of law *de novo*, issues of fact under the clearly erroneous standard, [and] mixed questions of law and fact either *de novo* or under the clearly erroneous standard depending on whether the question is predominantly legal or factual. . . ." (citations omitted)); *see also United States v. Rioux*, 97 F.3d 648, 654–59 (2d Cir. 1996) (conducting what appears to be plenary review of a fair cross-section claim on undisputed facts). Specifically, we review for clear error the district court's determination that Slaughter's expert put forth no evidence that the challenged SDNY practices cause or contribute to disparities.

II. The Fair Cross-Section Right

The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right to a . . . trial[] by an impartial jury of the State and district wherein the crime [was] committed . . . ." U.S. Const. amend. VI. In the nineteenth century, the Supreme Court struck down as unconstitutional the express exclusion of Black citizens from juries. *See Strauder v. West Virginia*, 100 U.S. 303, 310 (1879). But the practical exclusion from jury service of Black people, women, and other groups persisted well into the twentieth century.

In an effort to address this systematic exclusion, and recognizing that "this Nation has stated and restated its commitment to the goal of the representative

jury without making any significant effort to insure that this goal is attained," Congress enacted the Jury Selection and Service Act of 1968. S. Rep. No. 90-891, at 9–11 (1967). The JSSA provides: "It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes." 28 U.S.C. § 1861. It further states that "[n]o citizen shall be excluded from service as a grand or petit juror . . . on account of race, color, religion, sex, national origin, or economic status." 28 U.S.C. § 1862. To that end, the JSSA requires each federal district court to adopt a plan for the random selection of grand and petit jurors that is "designed to achieve" the objectives of Sections 1861 and 1862. 28 U.S.C. § 1863(a).

In *Taylor v. Louisiana*, the Supreme Court formally recognized the fair cross-section requirement as fundamental to the right to an impartial jury guaranteed by the Sixth and Fourteenth Amendments. 419 U.S. 522, 530 (1975). *Taylor* and the JSSA, read together, guarantee both state and federal criminal defendants the right to a grand and petit (trial) jury selected from a pool of people that fairly represents the community in which they are being tried.

We assess fair cross-section challenges under the burden-shifting framework set forth in *Duren v. Missouri*, 439 U.S. 357 (1979). To establish a prima

facie violation of the fair cross-section requirement, the defendant must show that: (1) "the group alleged to be excluded is a 'distinctive' group in the community"; (2) "the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community"; and (3) "this underrepresentation is due to systematic exclusion of the group in the jury-selection process." *Id.* at 364. Once the defendant satisfies all three of these elements, the burden shifts to the prosecution to show that a significant government interest is "manifestly and primarily advanced by those aspects of the jury-selection process . . . that result in the disproportionate exclusion of a distinctive group." *Id.* at 367–68. The *Duren* framework governs fair cross-section challenges under both the Sixth Amendment and the JSSA. *United States v. LaChance*, 788 F.2d 856, 864 (2d Cir. 1986).

There is no dispute that Black and Hispanic or Latino people are distinctive groups in the District. Accordingly, the only issues in this appeal are prongs two and three of the *Duren* test: whether the representation of Black and Hispanic or Latino people in SDNY venires is not fair and reasonable in relation to the number of such persons in the community, and whether this asserted underrepresentation is the product of systematic exclusion in the SDNY's jury selection process. We consider each question in turn.

A. Underrepresentation

i. Preliminary Issues

Assessing whether and to what extent Black and Hispanic or Latino people are underrepresented in SDNY venires requires answering three preliminary questions: First, what is the relevant community population? Second, at what stage of the jury selection process do we look for underrepresentation? And third, which method or methods of statistical analysis do we use to assess the significance of that underrepresentation?

The parties agree that the relevant community population against which SDNY venires should be compared is the population eligible for jury service in the SDNY's Manhattan courthouse: residents of New York, Bronx, Westchester, Putnam, and Rockland Counties who are at least eighteen years old. *See Rioux*, 97 F.3d at 657 ("We conclude that the appropriate measure in this case is the eighteen and older subset of the population, regardless of other qualifications for jury service.").

As to the second question, Slaughter assesses underrepresentation by comparing the number of Black and Hispanic or Latino people in the Manhattan *Qualified* Wheel to the number of Black and Hispanic or Latino people in the relevant community population. The government, on the other hand, argues that

we must compare *both* the Manhattan Qualified Wheel *and* the Manhattan Master Wheel to the relevant community population, depending on the systematic defect identified by Slaughter and the stage at which that alleged defect affects the jury selection process. So, to the extent Slaughter argues that the underrepresentation of Black and Hispanic or Latino people results from reliance on voter registration lists as the exclusive source of prospective juror names and from the practice of updating the Master Wheel only once every four years, those are defects that would affect the composition of the Manhattan *Master* Wheel, and this Court should look to the disparities in the Master Wheel to assess whether the underrepresentation is significant. On the other hand, to the extent Slaughter argues that the underrepresentation is caused by the SDNY's failure to follow up on jury qualification questionnaires that are not returned or returned as undeliverable, those are defects in the composition of the Manhattan *Qualified* Wheel, and this Court should look to the disparities in the Qualified Wheel to assess the significance of the underrepresentation.

The government's argument improperly blurs the lines between *Duren*'s second and third prongs. Prong two asks whether "the representation of [the distinctive groups] *in venires from which juries are selected* is not fair and reasonable in relation to the number of such persons in the community[.]" *Duren*, 439 U.S. at

364 (emphasis added). At least in the SDNY, the ultimate venires from which grand and petit juries are selected are the Qualified Wheels. *Duren* prong two focuses on the alleged disparity and whether it is quantitatively significant enough to warrant further scrutiny as to its root causes. It is only at prong three that we consider whether the disparity is actually caused by a particular defect in the jury selection process. At that step, in assessing whether an identified disparity in the venire from which jurors are chosen arises from a systemic defect, we focus on the stage in the selection process—Master Wheel or Qualified Wheel—impacted by the claimed defect. We therefore reject the government's argument and, for purposes of *Duren* prong two, assess the disparities as they exist in the Manhattan Qualified Wheel.

As to the third question, courts have considered several statistical models to assess whether and to what extent a distinctive group is underrepresented in a district's venires. Slaughter offers three models of statistical analysis to demonstrate significant underrepresentation of Black and Hispanic or Latino people in the Manhattan Qualified Wheel: the absolute disparity or absolute numbers method, the statistical decision theory, and the comparative disparity method. We explored each of these models in *Rioux*, 97 F.3d at 655–67.

The absolute disparity method "measures the difference between the group's representation in the general population and the group's representation in the qualified wheel." *Id.* at 655. The absolute disparity method is sometimes referred to as the absolute numbers method because it allows the court to calculate the average difference per venire in the number of jurors from the distinctive group due to underrepresentation. *Id.*

Slaughter's expert estimates that Black people comprise 21.19% of the relevant population but only 16.08% of the Manhattan Qualified Wheel, resulting in an absolute disparity of 5.11%, while Hispanic or Latino people comprise 28.44% of the relevant population but only 19.41% of the Manhattan Qualified Wheel, resulting in an absolute disparity of 9.03%. App'x 51–52. Using slightly different population statistics, the government's expert estimates absolute disparities of 5.72% for Black people and 9.88% for Hispanic or Latino people. App'x 95–96. Converting these estimates to absolute numbers, and assuming that the average venire contains 60 people, the SDNY would have to add, on average, between 3–4 Black people and 5–6 Hispanic or Latino people to every venire to eliminate the disparities.

Slaughter's expert also analyzed disparities under statistical decision theory and the comparative disparity method. Statistical decision theory "measures the

likelihood that underrepresentation could have occurred by sheer chance." *Rioux*, 97 F.3d at 655. According to the theory, the more improbable it is that a particular jury pool resulted from random selection, the more likely there is a defect in the jury selection process. *Id.* The comparative disparity method, on the other hand, "measures the diminished likelihood that members of an underrepresented group, when compared to the population as a whole, will be called for jury service." *Rioux*, 97 F.3d at 655 (citation omitted). Comparative disparity is calculated by dividing the absolute disparity by the group's percentage in the population, then multiplying by 100 (to turn the figure into a percentage). *Id.*

In *Rioux*, we rejected the statistical decision theory and comparative disparity approaches and embraced the absolute disparity/absolute numbers method to assess underrepresentation. *See Rioux*, 97 F.3d at 655–56. But we have recognized the limits of this method "when applied to an underrepresented group that is a small percentage of the total population," because an underrepresentation that can be fixed by adding "only" one or two members to an average venire might "lead to the selection of a large number of venires in which members of the group are substantially underrepresented or even totally absent." *United States v. Jackman*, 46 F.3d 1240, 1247 (2d Cir. 1995) (dealing with district in which Black and Hispanic people comprised 6.34% and 5.07% of the population, respectively); *see*

also United States v. Biaggi, 909 F.2d 662, 678 (2d Cir. 1990) ("[T]he Sixth Amendment assures only the *opportunity* for a representative jury, rather than a representative jury itself, but that opportunity can be imperiled if venires regularly lack even the small numbers of minorities necessary to reflect their proportion of the population." (citations omitted)); *see generally Berghuis v. Smith*, 559 U.S. 314, 329 (2010) (discussing imperfections inherent in each statistical approach). Thus mindful that the circumstances of any given case may warrant the use of different or even multiple modes of statistical analysis, here we proceed, as the district court did, with the absolute disparity/absolute numbers method.

ii. Application of the Absolute Disparity/Absolute Numbers Method

Slaughter's expert estimates absolute disparities in the Manhattan Qualified Wheel of 5.11% for Black people and 9.03% for Hispanic or Latino people. App'x 51–52. The government's expert estimates absolute disparities of 5.72% for Black people and 9.88% for Hispanic or Latino people. App'x 95–96. In absolute numbers, the SDNY would have to add between 3–4 Black people and 5–6 Hispanic or Latino people to the average 60-person venire to eliminate the disparities.

The district court did not make any findings as to the parties' statistics. Instead, it assumed without deciding that the disparities are sufficiently "substantial or significant" to satisfy *Duren* prong two. App'x 163.

The disparities presented in this case are greater than any that have previously passed muster in this Court. *See Anderson v. Cassacles*, 531 F.2d 682, 685 (2d Cir. 1976) (finding no fair cross-section violation in the Northern District of New York with an absolute disparity of 2% for Black people); *Rioux*, 97 F.3d at 657–68 (finding no fair cross-section violation in the District of Connecticut with absolute disparities of 1.58%–2.08% for Black people and 2.14% for Hispanic people); *United States v. Jenkins*, 496 F.2d 57, 64 (2d Cir. 1974) (finding no fair cross-section violation in the District of Connecticut with an absolute disparity of 2.15% for Black people).

The highest disparities previously encountered by this Court also involved a challenge to the SDNY's jury selection plan. *See Biaggi*, 909 F.2d at 677. In *Biaggi*, the defendant asserted that the SDNY's use of voter registration lists as the exclusive source of prospective jurors resulted in unlawful underrepresentation of Black and Hispanic people. *Id.* at 676–77. An evidentiary hearing revealed absolute disparities of 3.6% for Black people and 4.7% for Hispanic people. *Id.* at 677. From these statistics, the district court estimated that the addition of two

Black people and two to three Hispanic people to the average 60-person venire would eliminate the underrepresentation, and concluded those figures were "not so great as to amount to a violation of the fair cross-section requirement." *Id.* at 678 (citation omitted).

We affirmed, holding that the disparities were insubstantial and opining that the use of voter registration lists as the exclusive source of prospective jurors was, at least in that case, "benign." *Id.* However, in light of the infirmity of the absolute numbers approach when the group in question comprises a relatively small proportion of the population, we cautioned that we "would find the Sixth Amendment issue extremely close if the underrepresentation had resulted from any circumstance less benign than use of voter registration lists." *Id.*

Slaughter argues that the current underrepresentation of Black and Hispanic or Latino people in SDNY venires is significant enough to satisfy *Duren* prong two, placing particular emphasis on our discussion in *Biaggi*. The government disagrees, stressing that *Duren* does not require perfect

representativeness and citing to cases from other circuits where courts imposed a 10% minimum disparity to satisfy *Duren* prong two.[6]

These disparities are troubling, especially considering the fact that underrepresentation of Black and Hispanic or Latino people in SDNY venires has only *increased* in the decades since *Biaggi*. But we are wary of wading into the difficult line-drawing required at the second prong of the *Duren* analysis unless absolutely necessary. For that reason, like the district court, for the purpose of assessing the third *Duren* prong, we assume without deciding that the disparities identified by Slaughter satisfy the second prong of *Duren*.

B. Systematic Exclusion

Assuming the disparities are significant, we turn to *Duren* prong three and ask whether the underrepresentation of Black and Hispanic or Latino people is caused by systematic exclusion of these groups in the SDNY's jury selection process. Slaughter argues that the persistence of the disparities alone establishes systemic underrepresentation for purposes of *Duren* prong three, and also identifies several features of SDNY's selection process that he contends drive

[6] *See, e.g.*, *United States v. Phillips*, 239 F.3d 829, 842 (7th Cir. 2001) ("[A] discrepancy of less than ten percent alone is not enough to demonstrate unfair or unreasonable representation of [Black people] on the venire." (citation omitted)); *United States v. Grisham*, 63 F.3d 1074, 1078–79 (11th Cir. 1995) ("If the absolute disparity . . . is 10 percent or less, the second element is not satisfied."). The government does not explicitly invite this Court to adopt a bright line minimum disparity for *Duren* prong two.

systemic exclusion of Black and Hispanic or Latino people. Both arguments are unavailing.

i. Persistence

First, Slaughter asserts that a "long period of significant underrepresentation," standing alone, is sufficient to establish systematic exclusion. Appellant's Br. at 38. In support of his argument, Slaughter points to data demonstrating increasing disparities in Black and Hispanic or Latino representation in SDNY venires over the past two decades and cites to a particular passage from *Duren*:

> [I]n order to establish a prima facie case, it was necessary for petitioner to show that the underrepresentation of women, generally and on his venire, was due to their systematic exclusion in the jury-selection process. Petitioner's proof met this requirement. *His undisputed demonstration that a large discrepancy occurred not just occasionally but in every weekly venire for a period of nearly a year manifestly indicates that the cause of the underrepresentation was systematic*—that is, inherent in the particular jury-selection process utilized.

439 U.S. at 366 (emphasis added). Slaughter also cites to several cases from other circuits concluding that significant disparities over a sustained period of time may prove systematic exclusion. *See, e.g.*, *Barber v. Ponte*, 772 F.2d 982, 989 (1st Cir. 1985); *United States v. Test*, 550 F.2d 577, 586 (10th Cir. 1976).

The government argues that Slaughter's position, if accepted, would improperly collapse prongs two and three of *Duren* and relieve defendants of their burden to show systematic exclusion. The district court adopted the same position.

To be sure, *Duren* supports the idea that persistent disparities over a significant period of time may "*indicate*[] that the cause of the underrepresentation [is] systematic . . . ." 439 U.S. at 366 (emphasis added). But we are aware of no Second Circuit or Supreme Court case in which the persistence of disparities over time, standing alone, satisfied *Duren* prong three. Indeed, in *Duren* it was the presence of disparities over time *and* several practices that effectively excluded 39.5% of eligible women from jury service that, together, demonstrated systematic exclusion. 439 U.S. at 365–67. Thus, while the continued and increased disparities in Black and Hispanic or Latino representation in the SDNY may be relevant to whether those disparities are systemic, we decline to hold that the persistence of disparities by itself satisfies *Duren* prong three. We still have to consider what factors intrinsic to the jury venire selection process, if any, systemically drive the identified and persistent disparities.

ii. Specific Practices

Slaughter argues that three aspects of the Plan cause underrepresentation of Black and Hispanic or Latino people in SDNY venires: (1) reliance on voter registration lists as the exclusive source of names for prospective jurors, (2) updating the Master Wheels only once every four years, and (3) refusal to follow up on jury qualification questionnaires that are not returned or returned as undeliverable. Although Slaughter's expert asserts that each of these practices causes underrepresentation of Black and Hispanic or Latino people, he provides no data to support that assertion.

The government counters that any disparities in Black and Hispanic or Latino representation are the result of external forces outside the District's control, rather than systematic defects in the Plan. And the government offers its own data to refute Slaughter's assertion that certain aspects of the Plan cause underrepresentation.

As to the use of voter registration lists, the government's expert examined statewide data and found that Black people were more likely to register to vote by 1% whereas Hispanic or Latino people were less likely to register by 7.2%. The expert did not find these numbers to be statistically significant, and the government argues that any disparities caused by the use of voter registration lists

are the result of an external factor outside the SDNY's control: the choice whether to register to vote. In other words, it is not the SDNY's fault that Hispanic or Latino people are less likely to register to vote.

Likewise, the government's expert examined several years of data to isolate the expected impact of updating the Master Wheels only once every four years and found that practice contributed less than one percentage point to the disparities for each group: 0.32% percent for Black people and 0.71% percent for Hispanic or Latino people. The government argues these disparities are the result of benign demographic changes such as moving, rather than any aspect of the SDNY's Plan.

Moreover, insofar as the SDNY's reliance on voter registration lists and its (former) practice of updating the Master Wheels only once every four years affect the composition of the *Master* Wheels, the government urges this Court to look to the disparities in the Manhattan Master Wheel, rather than the Manhattan Qualified Wheel, to assess the impact of these practices on venire demographics. The government's expert estimated absolute disparities of 1.34% for Black people and 0.04% for Hispanic or Latino people in the Manhattan Master Wheel, as

compared to disparities of 5.72% and 9.88% in the Qualified Wheel.[7] Based on these and its expert's other findings, the government concludes that reliance on voter registration lists and updating the Master Wheel once every four years do not cause significant underrepresentation of Black and Hispanic or Latino people in SDNY venires.

As to the SDNY's failure to follow up on questionnaires returned as undeliverable, the government's expert found that undeliverable questionnaires occurred only 7.4% of the time. He also determined that questionnaires sent to Black people were only slightly more likely to be undeliverable than those sent to others, while questionnaires sent to Hispanic or Latino people were slightly *less* likely to be returned as undeliverable. In addition to emphasizing these statistics, the government argues that the inability to serve juror questionnaires because they were returned as undeliverable is an external force over which the SDNY has no control.

Although the government's expert did find that Black and Hispanic or Latino people disproportionately failed to respond to jury qualification

[7] Unlike with the Manhattan Qualified Wheel, there is no demographic data on the Manhattan Master Wheel. Thus, the government's expert relied on geocoding to estimate the percentage of Black and Hispanic or Latino people in the Manhattan Master Wheel. We need not opine on the accuracy of this method, as Slaughter's claim principally fails due his own lack of proof as to systematic exclusion.

questionnaires, the government asserts that whether to respond to a jury qualification questionnaire is an individual decision that the jury selection system cannot control. Thus, the government contends, any resulting underrepresentation is not caused by the SDNY.

The district court rejected Slaughter's argument that the disparities in Black and Hispanic or Latino representation are the result of systematic exclusion. First, the court found that Slaughter "has not put forth evidence that any of these [challenged] practices causes or contributes to the identified disparities." App'x 166. Second, the court concluded that "most of these practices have been specifically authorized by the Second Circuit." *Id.* And third, the court determined that any underrepresentation in venires is due to "external forces" outside the SDNY's control, "not defects inherent in the district's jury plan." *Id.* at 167.

Regarding the use of voter registration lists as the exclusive source of names for prospective jurors, the district court reasoned that the Second Circuit has "specifically authorized" this practice. App'x 166–67 (citing *United States v. Young*, 822 F.2d 1234, 1239 (2d Cir. 1987)). As to refilling the Master Wheels only once every four years, the court was "unpersuaded that this practice constitutes . . . systematic exclusion," and found that demographic shifts that might occur in a

four-year period such as "moving rates and [reaching voting age] are external forces and not defects inherent in the district's jury plan." App'x 167. Finally, with respect to the SDNY's failure to follow up on jury qualification questionnaires that are not returned or returned as undeliverable, the district court concluded "the Second Circuit has found [] similar conduct does not amount to systematic exclusion." App'x 168 (citing *Rioux*).

We conclude that Slaughter has not met his burden under *Duren* prong three for the principal reason that he has provided no evidence that the challenged practices actually cause underrepresentation of Black and Hispanic or Latino people in SDNY venires. The assertion of his expert that certain aspects of the Plan cause underrepresentation, without data to back that up, is not enough to demonstrate systematic exclusion.

As noted, the government's expert did find that Black and Hispanic or Latino people disproportionately failed to respond to jury qualification questionnaires, significantly contributing to their underrepresentation on the Qualified Wheels. *See* App'x 107 ("[T]he primary reason that African Americans are underrepresented on the qualified wheel is that they disproportionately do not respond to the questionnaire sent. The same pattern holds for Hispanics."). Slaughter, however, makes no use of the government's data to support his

systematic exclusion argument. Nor does he offer any data to suggest that the content of those questionnaires, the process by which they are disseminated, or any other factor within *the District's* control contributes to the disproportionate response rate. Without more, he has failed to carry his burden under *Duren* to establish a prima facie violation of the fair cross-section requirement.

Our assessment is driven by the data and expert evidence in this case. We express no opinion on the viability of Slaughter's *theories* as to why the disparities exist; he has failed to muster persuasive data to support his hypotheses. Because we reject Slaughter's fair cross-section challenge on this basis, we need not address the district court's other grounds for rejecting Slaughter's claims. In sum, because Slaughter has put forth no persuasive evidence that the challenged aspects of the Plan actually cause underrepresentation of Black and Hispanic or Latino people in SDNY venires, we affirm.

CONCLUSION

The Sixth Amendment and the JSSA do not guarantee perfect representativeness in grand and petit jury pools. But there may come a time where persistent disparities, sufficiently proven to be caused by the district's jury selection process, can no longer be tolerated without contravening the JSSA and the Sixth Amendment. In this case, Slaughter has not established that the Plan

causes underrepresentation of Black and Hispanic or Latino people in SDNY venires. Our assessment is driven by a review of the evidence in the record, not broad conclusions of law. And nothing in our opinion precludes the possibility that a future challenge with greater proof might establish that the disparities identified in the record are systemic.

For the above reasons, we **AFFIRM** the judgment of the district court.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of August, two thousand twenty-four.

Before: Dennis Jacobs,
Beth Robinson,
Alison J. Nathan,
Circuit Judges.

United States of America,

Appellee,

v.

Ellva Slaughter,

Defendant - Appellant.

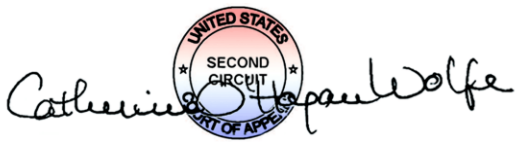
JUDGMENT

Docket No. 23-6055

The appeal in the above captioned cases from a judgment of the United States District Court for the Southern District of New York was argued on the district court's record and the parties' briefs.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the judgment of the district court is AFFIRMED.

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court



UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA

v.

ELLVA SLAUGHTER
a/k/a Joseph Granville
a/k/a Ricardo Slaughter

JUDGMENT IN A CRIMINAL CASE

Case Number: 21-cr-00230-KPF

USM Number: 46327-083

Tamara Lila Giwa, Esq.
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☑ was found guilty on count(s) One
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g), 18 U.S.C. § 924(a)(2)	Felon in Possession of a Firearm	11/6/2020	One

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) no open counts ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

1/6/2023
Date of Imposition of Judgment

Katherine Polk Failla
Signature of Judge

Honorable Katherine Polk Failla, U.S. District Judge
Name and Title of Judge

1/11/2023
Date

DEFENDANT: ELLVA SLAUGHTER a/k/a Joseph Granville a/k/a F
CASE NUMBER: 21-cr-00230-KPF

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
Time served plus one (1) month

☐ The court makes the following recommendations to the Bureau of Prisons:

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ELLVA SLAUGHTER a/k/a Joseph Granville a/k/a I
CASE NUMBER: 21-cr-00230-KPF

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Two (2) years

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☐ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: ELLVA SLAUGHTER a/k/a Joseph Granville a/k/a I
CASE NUMBER: 21-cr-00230-KPF

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: ELLVA SLAUGHTER a/k/a Joseph Granville a/k/a I
CASE NUMBER: 21-cr-00230-KPF

SPECIAL CONDITIONS OF SUPERVISION

1. You will participate in an outpatient treatment program approved by the United States Probation Office, which program may include testing to determine whether you have reverted to using drugs or alcohol. You must contribute to the cost of services rendered based on your ability to pay and the availability of third-party payments. The Court authorizes the release of available drug treatment evaluations and reports, including the presentence investigation report, to the substance use disorder treatment provider.

2. You must participate in an outpatient mental health treatment program approved by the United States Probation Office. You must continue to take any prescribed medications unless otherwise instructed by the health care provider. You must contribute to the cost of services rendered based on your ability to pay and the availability of third-party payments. The Court authorizes the release of available psychological and psychiatric evaluations and reports, including the presentence investigation report, to the health care provider.

3. You shall submit your person, and any property, residence, vehicle, papers, computer, other electronic communication, data storage devices, cloud storage or media, and effects to a search by any United States Probation Officer, and if needed, with the assistance of any law enforcement. The search is to be conducted when there is reasonable suspicion concerning violation of a condition of supervision or unlawful conduct by the person being supervised. Failure to submit to a search may be grounds for revocation of release. You shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search shall be conducted at a reasonable time and in a reasonable manner.

4. It is recommended that you be supervised by the district of residence.

DEFENDANT: ELLVA SLAUGHTER a/k/a Joseph Granville a/k/a F
CASE NUMBER: 21-cr-00230-KPF

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 100.00	$	$	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ELLVA SLAUGHTER a/k/a Joseph Granville a/k/a F
CASE NUMBER: 21-cr-00230-KPF

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:
a. Smith & Wesson .40 caliber semiautomatic firearm bearing serial number P0C0875; and b. Fourteen .40 caliber cartridges (See Consent Preliminary Order of Forfeiture as to Specific Property, Doc. #64).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

v. 20 CR 230 (KPF)
Telephone Conference

ELLVA SLAUGHTER,

Defendant.

----------x

New York, N.Y.
July 21, 2021
2:00 p.m.

Before:

HON. KATHERINE POLK FAILLA,

District Judge

APPEARANCES

AUDREY STRAUSS,
United States Attorney for the
Southern District of New York
BY: MATTHEW A. WEINBERG

DAVID PATTON
FEDERAL DEFENDERS OF NEW YORK
Attorney for Defendant
BY: SYLVIE J. LEVINE

(The Court and all parties appearing telephonically)

(Case called)

MR. WEINBERG: Good afternoon. This is Matthew Weinberg for the government.

THE COURT: Mr. Weinberg, good afternoon. Thank you very much. Is anyone with you today on this conference?

MR. WEINBERG: No, your Honor. Just me.

THE COURT: Okay. Thank you.

And representing Mr. Slaughter this afternoon.

MS. LEVINE: Good afternoon, your Honor. This is Sylvie Levine from the Federal Defenders of New York. I have a law intern in my office with me and Mr. Slaughter on the line.

THE COURT: Okay. Your intern is most welcome. Thank you for letting me know.

Mr. Slaughter, let me please begin by making sure you're able to hear me on this conference. Are you, sir?

THE DEFENDANT: Yes. Good afternoon, Ms. Judge, your Honor.

THE COURT: Good afternoon to you, as well. Thank you very much for participating this afternoon.

Ms. Levine, would you please let me know, of course without disclosing privileged communications, if you and Mr. Slaughter have discussed the rights that he has to have proceedings of this type take place in person, his ability to waive those rights, and the fact that, if he wanted to, we

could have this conference take place by telephone.

MS. LEVINE: Yes, your Honor. We're prepared to proceed by telephone. Mr. Slaughter understands that this is a result of the COVID-19 pandemic.

THE COURT: Thank you. Ms. Levine, just so that I can be sure, may I please inquire of this limited issue with respect to Mr. Slaughter.

MS. LEVINE: Sure.

THE COURT: Thank you. Mr. Slaughter, I know you've just heard me speaking with your attorney. Please understand, sir, that I don't want you to tell me the details of your communications with your attorney, but I would like to be sure, before we go forward today, that you understand that you have the right to have a proceeding of this type take place in person in the courthouse, but that you also have the ability to waive that right and to have this proceeding take place by phone, in this instance, and people are doing that often these days because of the pandemic, but I do want to make sure you know of the rights that you have.

Do you know those rights, sir?

THE DEFENDANT: Yes, your Honor.

THE COURT: And with knowledge of those rights, is it your wish today, sir, to proceed by telephone rather than in person?

THE DEFENDANT: Yes, your Honor, we can proceed by

telephone.

THE COURT: Mr. Slaughter, thank you for letting me know this.

Ms. Levine, what I've convened this conference for is to render a decision on your motion to dismiss the indictment based on Sixth Amendment or jury selection and service backgrounds.

I would like to talk to you before I get into rendering my decision about two aspects of it. One is, I can, if you would like me to, list the procedural history of this case, which would concern the filing of the complaint and the filing of the indictment, and the date of which the motion was filed, but I could also dispense with that if the parties were in agreement as to what happened before this motion was filed.

Separately, I think, by now, that the factual circumstances of jury composition in the Southern District and the district's jury plan are out there, and I don't think anyone is disputing them, but if you would like me to make factual findings of about how juries are put together in the Southern District of New York, I can do so.

May I get your thoughts on each of those points.

MS. LEVINE: Sure. This is Sylvie Levine.

Your Honor, I think the parties have no dispute about the procedural history in this case. Therefore, we don't think it's necessary for the Court to reiterate it.

Similarly, I agree with your Honor that the fact that the jury plans are what they are, I don't think we have any factual dispute about them. So, I'm happy to skip that part, as well, if the Court is comfortable with it.

THE COURT: That is fine. Let me please confirm with Mr. Weinberg.

Mr. Weinberg, I've asked Ms. Levine about dispensing with extensive discussion of the procedural history of this particular case and dispensing the discussion of the manner in which juries are selected in this district, including, for example, the master jury wheel and the qualified jury wheel.

Are you comfortable, sir, if I dispense with those discussions and proceed straight to Mr. Slaughter's arguments in favor of dismissal of the indictment?

MR. WEINBERG: Yes. This is Matthew Weinberg. Yes, your Honor, I have no objection to anything Ms. Levine said.

THE COURT: Thank you. Please let me begin and I'll ask for your patience. I thank you for allowing me to present this orally, but I wanted to make sure I got this decision to you as quickly as possible.

Mr. Slaughter has raised two grounds for dismissal of the indictment. First, he argues that, due to the underrepresentation of Black and Latino individuals on the district's jury list, the grand jury then indicted him, violated his rights under the Sixth Amendment to a grand jury

drawn from a fair cross-section of the community. He makes the related argument that his rights under the JSSA, which is, as I mentioned earlier, the Jury Selection and Services Act, were violated because the grand jury constituted a substantial failure to comply with the JSSA's requirement that a grand jury be randomly selected from a fair cross-section of the community.

The government responds that Mr. Slaughter has failed to establish either that Black and Latino individuals are, in fact, underrepresented on the district's jury list, but that to the extent there is any underrepresentation, it is attributable to some systematic feature of the jury selection process. For this reason, because the government argues that the defendant has failed to establish either of these things, the government asks that the claims be denied and that the indictment not be dismissed.

For reasons that I'm going to explain shortly, the Court concludes that Mr. Slaughter has not established either a violation of his rights under the Sixth Amendment or a substantial failure to comply with the JSSA.

In arriving at this conclusion, the Court, me, has considered recent decisions from other judges in this district. Several of these were referenced in a prior decision of mine rendered on May 17th of 2021, an oral decision in the case of *United States v. Balde*, which is docketed at 20 CR 281. I've

also considered subsequent decisions that have addressed arguments that have been directed in particular to the Manhattan jury wheels. These cases include Judge Berman's decision in *United States v. Middlebrooke*, 21 CR 89, and that one actually has a Westlaw cite, 2021 WL 2402162, and Judge Liman's decision in United States v. Ortiz-Molina, that is in docket number 21 CR 173. This Court agrees with the reasoning and the analysis in those sister court decisions and incorporates much of that analysis here.

But, to begin with the applicable law, the text of the Sixth Amendment provides that a defendant is entitled to a trial by an impartial jury of the state and district wherein the crimes shall have been committed. This right has been interpreted to require trial by a jury selected from a fair and representative cross-section of the community. I'm citing here, too, several cases, one of which is *Taylor v. Louisiana*, 419 U.S. 522 from 1975. In another Supreme Court decision from 1979, *Duren v. Missouri*, 439 U.S. 357, the Supreme Court established a three-part test that defendants must meet in order to establish a prima facie violation of the fair cross-section requirement: Number 1, the excluded group is distinctive; Number 2, representation of this group and venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and 3, the underrepresentation is due to systematic exclusion of the

group in the jury selection process.

Relatedly, the JSSA sets forth the policy that all litigants in federal court entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross-section of the community in the district or division wherein the court convenes. I'm quoting from section 1861 of Title 28 of the United States Code. The Second Circuit has held that fair cross-section challenges brought under the JSSA must also be analyzed using the *Duren* test. That was found in the case of *United States v. LaChance*, 788 F.2d 856, a Second Circuit decision from 1986. As a result, if a fair cross-section challenge fails under the Sixth Amendment, as a practical matter, it also fails under the JSSA.

Even if the defendant makes a prima facie showing under *Duren*, the government may rebut it by showing a significant state interest behind the jury selection process at issue, and that was determined in the *Duren* case itself.

So turning now to the Sixth Amendment claim, Mr. Slaughter argues that his right under the Sixth Amendment and the JSSA to a jury drawn from a fair cross-section of the community was violated due to the underrepresentation of Black and Latino individuals in the jury pool in this district.

Turning first to the first *Duren* prong, whether the excluded groups — in this case, Blacks or African Americans and Hispanics or Latinos — are distinctive, the parties are in

agreement that they are, and I will therefore turn to the second prong, which is whether these groups are fairly and reasonably represented in the venires in rough proportion to their numbers in the relevant in community.

The relevant comparison is between the number of minority persons in the community population and the number of persons belonging to that class in the jury pool. I'm citing for that proposition the Second Circuit's 1995 decision in *United States v. Jackman*, 46 F.3d 1240.

The parties appear to agree that the relevant community population is the population of 18 and older individuals in the counties from which the Manhattan wheels are drawn.

Now, on this point, the parties submit slightly different estimates of the community population. The government's expert, Dr. Bernard Siskin, relies upon the latest available data from the American Community Survey from 2019, which provides that the relevant community population is 21.8 percent Black, and 29.29 percent Hispanic. Defendant's expert, Jeffrey O'Neal Martin, uses ACS data collected over the five-year period predating 2019, which has slightly lower figures and provides that the community population is 21.19 percent Black and 28.44 percent Hispanic.

The parties do agree that the demographics of the Manhattan qualified jury wheel, as of December 9th, 2020, were

16.08 percent Black and 19.41 percent Hispanic.

While the Manhattan master wheel does not include reliable information regarding the race and ethnicity of the individuals selected from voter registration lists, the racial and ethnic makeup of the wheel can be estimated using geocoding and Bayesian Improved Surname Geocoding, which combines estimating the proportions of persons who are of a given race or ethnicity based on the racial and ethnic makeup of the area in which they live with enhanced accuracy by using information about persons' last names.

Under those methods, the government's expert concludes that the Manhattan's master wheel is 20.46 percent Black and 29.25 percent Hispanic.

The parties have presented to me three models for evaluating claims of significant underrepresentation: The absolute disparity method, the comparative disparity method, and statistical decision theory. The Second Circuit has strongly suggested that the absolute disparity method is generally appropriate, and that is the method both this Court and its sister courts have used in recent decisions in this area. As a Second Circuit cite for this point, I call the parties' attention to *United States v. Rioux*, 97 F.3d 648 from 1996, but I've used this analysis in the *Balde* decision, and I believe that some of my fellow judges, including Judge Liman in *United States v. Ortiz-Molina*, used it. I believe, as well,

that Judge Román used it in the *Allen* case, and Judge Crotty used it in the *Schulte* case, which were decided earlier this year.

The absolute disparity method measures the difference between the groups' representation in the relevant community and the representation in the jury venire. For example, if African Americans composed 10 percent of the community but only 5 percent of the jury venire, the absolute disparity is 5 percent. Under Second Circuit precedents, absolute disparities nearly as high as 5 percent have not been found to satisfy the underrepresentation element of *Duren*. This was found, in the first instance, in the *Biaggi* decision of the Second Circuit, 909 F2.d 662 in 1990; and, as well, in the *Allen* decision, a district court decision from 2021; and in the *Barnes* decision, a district court decision from 2007 contained at 520 F. Supp. 2d 510.

So using this method, the government's expert calculated the absolute disparity between the master wheel and the community population as 1.34 percent for Black individuals and .04 percent for Hispanic individuals. As to the qualified wheel, the government calculates the absolute disparity to be 5.72 percent for Black individuals and 9.88 percent for Hispanic individuals. Defendant's expert submits slightly lower absolute disparities for the qualified wheel, namely 5.11 percent for Black individuals and 9.03 percent for

Hispanic individuals, and does not provide any figures for the absolute disparity between the master wheel and the community.

So, while the disparities between the master wheel and the community fall comfortably within the tolerated disparities in past precedents, the disparities between the qualified wheel and the community are substantially greater than the absolute disparities the Second Circuit has approved.

Mr. Slaughter contends that the qualified wheel is the relevant jury venire, while the government argues that the Court must consider both the master wheel and the qualified wheel together.

There is no clear answer from the Supreme Court or from the Second Circuit regarding what constitutes the appropriate jury venire to consider in this context. In *Rioux*, for example, the Second Circuit observed that the relevant jury pool may be defined by the master list, the qualified wheel, the venires, or a combination of the three.

Several district courts within the circuit have defined the relevant jury pool with respect to the particular systematic defect identified by the defendant. The district court *Rioux* case in Connecticut did that, as did the *Allen* case of earlier this year.

The government argues that because the systematic defects put forth by the defendant's expert relate to both the process by which the master wheel is created and the process by

which it is narrowed to the qualified wheel, the Court must take both wheels into account in evaluating any alleged disparity.

Mr. Slaughter concedes that his allegations implicate both the master and qualified wheels, but he argues that the Court should nonetheless pay particular attention to the qualified wheel, that the qualified wheel incorporates all of the errors identified by defendant, given that it inherits any defects in the master wheel design; and the qualified wheel, unlike the master wheel, includes reliable demographic data.

Ultimately, I've decided not to decide this issue, and that is because, even were I to accept defendant's arguments and assume that the defendant has met his burden of showing substantial or significant underrepresentation, Mr. Slaughter's claim would nonetheless fail because he has not demonstrated the third prong, that is systematic exclusion.

So I am going to focus now on that prong.

To review, in order to establish this factor, Mr. Slaughter must show that the underrepresentation is due to systematic exclusion of the group in the jury selection process. I'm quoting here from the *Duren* decision.

Now, in the *Rioux* decision, the Second Circuit explained that there is systematic exclusion when the underrepresentation is due to the system of jury selection itself rather than external forces. And so, conversely, under

the external forces principle, outside causes of underrepresentation, such as demographic changes, do not constitute systematic exclusion. That's found in the *Rioux* case. It was found, as well, in the Second Circuit's decision in *Schanbarger v. Macy*, 77 F.3d 1424. In other courts, too, I see that the Eighth Circuit in the *United States v. Little Bear* decision in 1978, 583 F2.d 211, found that inclement weather in North Dakota that led to an underrepresentation of rural jurors was not systematic exclusion. Somewhat analogously in *United States v. Jones*, 2006 WL 278248, from the Eastern District of Louisiana, it was found that Hurricane Katrina's alleged disparate impact on potential African American jurors was not systematic exclusion.

Mr. Slaughter's claims here are largely foreclosed by these cases and by this principle of external forces because he has not identified a systematic defect in the jury selection process.

In Mr. Slaughter's opening brief, he relies upon the existence of the absolute disparity in the qualified wheel, and the fact that this disparity increased between the years 2010 and 2019. He also points to a 1996 case from this district recognizing the existence of similar — but smaller — disparities, and finding those disparities did not rise to the level of a constitutional violation. That earlier case is *United States v. Reyes*, and it is contained at 934 F. Supp.

553. But in Mr. Slaughter's view, the very existence of these persistent and increasing disparities proves that they are the result of systemic exclusion.

On this point, I accept Judge Liman's analysis. He rejected this argument in *Ortiz-Molina*. He found that, if accepted, the argument would substantially read out *Duren's* third prong, because defendant would meet his burden by showing a persistent — but not systematic — underrepresentation of a distinctive group.

This argument was also rejected by Judge Berman in *Middlebrooks* for similar reasons. Judge Berman found that defendant's reliance upon a 10-year pattern of increasing underrepresentation of Latino individuals in the qualified jury wheel conflated *Duren's* underrepresentation element with systematic exclusion.

This Court agrees with the analyses in those courts and it finds that Mr. Slaughter must do more than point to the existence of the disparity to satisfy this prong of the *Duren* test.

In the alternative, Mr. Slaughter identifies a number of practices in this district that it argues are responsible for the disparities in the qualified wheel. These include the fact that the Southern District draws the master jury wheel exclusively from voter registration roles, which, it has argued, underrepresent the number of jury eligible Black and

Latino New Yorkers. Mr. Slaughter also cites the district's practice of refilling the master wheel only every four years, which he argues arbitrarily removes jury eligible 18 to 21-year-olds from the prospective jury pools and favors individuals with stable housing over those who are more transient; he notes that the district removes inactive voters from the wheel; and that the jury administrator does not attempt to reach jurors who do not respond to questionnaires.

Here, too, Judge Liman and Judge Berman have considered, in rejecting these arguments, that these practices violate either the Sixth Amendment or the JSSA. This Court similarly finds these arguments unpersuasive.

To begin, Mr. Slaughter has not put forth evidence that any of these practices causes or contributes to the identified disparities. That was noted in the *Ortiz-Molina* decision. At that point, Judge Liman was citing the *Berghuis v. Smith* case from 2010, reported at 559 U.S. 314, where the Court found that a defendant cannot make out a prima facie case merely by pointing to a host of factors that, individually or in combination, might contribute to a group's underrepresentation.

Secondly, and perhaps equally importantly, most of these practices have been specifically authorized by the Second Circuit.

In *Schanbarger v. Macy*, the Second Circuit held that a

jury venire drawn from voter registration lists does not violate the Sixth Amendment's fair cross-section requirement. That is a 1996 decision reported at 77 F.3d 1424. It was echoed or, I suppose, preceded by the Second Circuit decision in 1987 in *United States v. Young*, reported at 822 F.2d 1234. The *Young* case found specifically, and I quote, the use of voter registration lists as the sole source of the names of potential jurors is not constitutionally invalid, absent a showing of discrimination, in a compiling of such voter registration lists.

In addition, with respect to the court's practice of refilling the master wheel once every four years, this Court considered that argument in its recent decision in *Balde*, and as in that decision, I remain unpersuaded that this practice constitutes the systematic exclusion within the meaning of the Sixth Amendment. I find that both moving rates and aging are external forces and not defects inherent in the district's jury plan.

With particular respect to the district's removal of inactive voters from the wheel, the Court again finds that the alleged exclusion here is the result of forces external to the jury plan, namely, people moving. I found that in *Balde*, and that echos what was said in the *Rioux* decision, and I understand that Judge Berman, in the *Middlebrooks* case, came to the same conclusion.

Lastly, as to defendant's arguments that the jury administrator does not attempt to reach jurors who do not respond to questionnaires, the Second Circuit has found that similar conduct does not amount to systematic exclusion. In *Rioux*, when the Court held that the District of Connecticut's failure to serve juror questionnaires that were returned as undeliverable and to maintain the list of persons whose questionnaires could not be delivered were external factors that did not qualify as systematic exclusion. Relying upon the *Rioux* case, the courts in *Middlebrooks* and *Ortiz-Molina* rejected this argument, and this Court will take the same approach.

Therefore, to summarize, I find that Mr. Slaughter has not established the third element under *Duren* and that his fair cross-section challenge under the Sixth Amendment and — I'll discuss in a moment — the JSSA must be rejected.

Turning to, more specifically, the JSSA claim.

In addition to fair cross-section claims and to the extent that that is what is being claimed under the JSSA, it has just been rejected for the reasons I've discussed in connection with the Sixth Amendment claim.

In addition to those claims, the defendant may also assert other violations of the JSSA if those violations constitute a substantial failure to comply with its provisions. The *LaChance* decision and the *Allen* decision speak to that

point. *LaChance* also notes that mere technical violations of the JSSA are not actionable and it finds that whether a violation is substantial or merely technical depends upon the nature and extent of its effects on the wheels and the venire from which a defendant's grand jury was derived. I'm quoting here in particular from pages 788 F.2d at 864. In this case, Mr. Slaughter's JSSA claim overlaps nearly completely with the Sixth Amendment fair cross-section claim, and I've just concluded that that claim must be denied for, largely, the same reasons.

Speaking to the bit of area that is not in overlap, let me turn to the specifics of these claims.

Mr. Slaughter submits that the following defects constitute substantial violations of the JSSA: The district's removal of inactive voters and the exclusion of voters who included an alternate mailing address when registering to vote in Putnam County, which I understand was the product of a technical glitch. Defendant contends that combined, these two factors exclude 308,217 individuals from potential jury service.

With particular respect to inactive voters, both this Court and its sister courts in the district have previously concluded that the exclusion of inactive voters from certain counties represented in the Manhattan jury pool does not substantially violate the JSSA because it is entirely logical

for a jury selection process to exclude individuals who have since moved. I'm quoting here to my own decision in the *Balde* case. It is page 32 of the transcript of that decision.

Now, as to the technical glitch that resulted in the unsuccessful transferring of alternative mailing addresses for certain voters in Putnam County, the government's expert has concluded that this had a statically trivial effect. Mr. Slaughter does not attempt to refute or otherwise dispute this conclusion, but both this Court and its sister courts have found that this clerical issue is, at most, a technical violation of the JSSA. Moreover, the government's expert found that this error had the effect of increasing the representation of African American and Hispanic individuals in the jury pool. And in the *Schulte* decision that I spoke of earlier, Judge Crotty concluded that empiricism precludes the notion that the violation was substantial in nature. I'm quoting here from the decision which is reported at 2021 WL 1146094 at *10.

This court is thus not persuaded that either of these issues identified by Mr. Slaughter rises to the level of a substantial violation of the JSSA. They are, at worst, technical violations. As a result, this Court is rejecting Mr. Slaughter's claim under the JSSA in its entirety.

For the foregoing reasons, Mr. Slaughter's motion to dismiss the indictment is denied. But, as I've done on prior occasions, I do convey my continued appreciation to the

parties, in particular, defense counsel, to raise these issues. I do think it is important that these issues receive the attention of judges in this district, because it is our duty to ensure that the district's jury plan produces the most equitable and representative jury pool possible, but particularly now that this is a year when the district is constructing new master and new qualified jury wheels.

So, that motion now having been resolved, I would like to speak to the parties about next steps, and it may be that that's something that you wish to discuss with each other and then get back to me.

Ms. Levine, let me please hear from you. What would you like to do? Would you like me to set something up now or would you like to have a chance to speak to Mr. Weinberg and get back to me?

MS. LEVINE: Sure. I think, perhaps, the Court should simply set a control date for 30 days from now, which would give us an opportunity to consult about next steps. I did just receive a Pimentel letter this morning from the government, and we continue to do some investigation regarding the possibility of a suppression motion. I think, with 30 days, we would be able to come back and let the Court know which way we're headed.

THE COURT: Would you like to actually set up a proceeding on that date, an appearance on that date?

MS. LEVINE: Well, I suppose (technical interruption) we could either (technical interruption) or I would be happy to file a letter on that date letting -- either, at that point, setting a motion schedule if that's the way we're going to proceed, or if we have a disposition or are close to a disposition, advising the Court of the same.

THE COURT: Okay. Thank you. For Speedy Trial Act purposes, it may make sense for me to actually set a proceeding with the understanding that if I get a letter from the parties asking to adjourn the proceeding in favor of a motion schedule or to either have the proceeding as a conference or to have it as a change of plea, we can do that, as well.

Ms. Noriega, I know my trial schedule is a little unpredictable, but do I have time in the next 30 days, please.

THE DEPUTY CLERK: Thursday, August 19th, at 10:30 a.m.

THE COURT: Mr. Weinberg, is that a date and time that works for the government?

MR. WEINBERG: It is, your Honor.

One other consideration I'll flag is that my understanding, and you and Ms. Levine might have a better understanding, but my understanding is that August 15th is the deadline for scheduling fourth quarter trials in light of the procedures that are in place for scheduling trials. So if we want a fourth quarter trial date, I think it would need to be

scheduled by August 15th, but the government is comfortable proceeding on August 19th. But if there was, just in scheduling a date just to have something, that would be fine, as well.

THE COURT: Sir, thank you very much for reminding me of that. If I can just offer the following observation about my own schedule. I have several trials that are currently on my calendar and I will be seeking trial dates for them in the fourth quarter of this year. As I look at them in speaking with you, they are not to be sure criminal cases, but they are cases that have come to me through reassignment through from judges who have left the bench for one reason or another. They are, actually, these cases, one of them is a 2014 case, there is a 2017 case. These are cases that have some years on them. Certainly while criminal cases take priority, I will listen to Ms. Levine if she has a different view, but I don't know that I would be able to get them scheduled in the fourth quarter of this year, just given the age of these civil cases that I am trying to resolve.

Ms. Levine, let me please hear your point, because Mr. Weinberg is absolutely right that criminal cases should take precedence. I would like to hear from you as to whether you believe we ought to have a trial in the fourth quarter.

MS. LEVINE: Your Honor, given what I just laid out, which is I think the work that still must be done on this case,

I don't anticipate that a trial within the fourth quarter is really feasible. I'm happy to report back to the Court on August the 19th and if, at that point, a trial date is necessary, we would have plenty of time to request one for the following quarter.

THE COURT: Thank you. Mr. Weinberg, is that acceptable to you, sir?

MR. WEINBERG: Yes, your Honor. That's fine. Thank you.

THE COURT: Okay. So what we'll do then, Ms. Levine, I don't want to presume too much, but I'm intuiting from your answer that you are available on the 19th of August at 10:30.

MS. LEVINE: Your Honor, yes, I am.

THE COURT: That is fine. I imagine Mr. Slaughter is, as well. Thank you.

We'll have that date, but again, I'm here sooner or later, as would be useful, to hear about motion practice or something else. Thank you.

Mr. Weinberg, is there an application from the government at this time?

MR. WEINBERG: Yes, your Honor. The government moves to exclude time under the Speedy Trial Act between now and the date of the next conference, August 19th, in the interest of justice in order to allow the parties to make and respond to any motions and continue to conduct any pretrial negotiations.

THE COURT: Thank you. Ms. Levine, your client's position, please.

MS. LEVINE: Your Honor, we have no objection. Given the record I just made about the work that has to be done with reviewing the discovery and understanding the Court's decision and considering the possibility of a pretrial disposition, we have no objection to that.

THE COURT: Thank you. Ms. Levine, may I speak to your client in particular about this?

MS. LEVINE: Of course.

THE COURT: Thank you. Mr. Slaughter, may I understand that you're still hearing me, sir?

THE DEFENDANT: Yes, ma'am. I'm here, your Honor.

THE COURT: Okay. Mr. Slaughter, thank you.

Mr. Slaughter, the government has asked me to exclude time under the Speedy Trial Act between today's date and August 19th, and I am going to do that here. In doing that, what I am finding is that the ends of justice that are served by excluding this period of time outweigh the interests that you have personally and that the public has more generally in you getting to trial more quickly. What I mean by that, sir, is that Ms. Levine has outlined for me things that she wishes to do. She wishes to think about the decision I've just rendered, she wishes to consider a letter that the government just sent her or she just received this morning, she wishes to consider

whether there is a motion to suppress that you might want to bring. I want to make sure that she has the opportunity to consider all of these options, but also the opportunity to speak with you meaningfully about these avenues of resolution or these avenues of potential next steps to take in this matter. I also want to make sure that she has the time to speak with the government about these things. So I think, in 30 days, you and she can talk about your options and she can do the work that she needs to do. So I am excluding the period of time from today's date through our next conference on August 19th.

Mr. Slaughter, do you understand what I've just said, sir?

THE DEFENDANT: Yes, your Honor. I understand.

THE COURT: Thank you. Mr. Weinberg, are there other issues that you would like to bring to my attention in this telephone conference?

MR. WEINBERG: No, your Honor. Nothing further from the government. Thank you.

THE COURT: Thank you. Ms. Levine, is there anything that you would like to bring to my attention in this conference?

MS. LEVINE: Not at this time. Thank you.

THE COURT: Okay. And please extend my best wishes to your interns for the summer. Hopefully we'll have an

opportunity where people can actually come to court and he or she can actually see a proceeding. That is at least my wish.

MS. LEVINE: I hope so, too.

THE COURT: With that, I will continue to wish you all safety and good health during this pandemic. Be well. We are adjourned.

* * *

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 121. Juries; Trial by Jury (Refs & Annos)

28 U.S.C.A. § 1861

§ 1861. Declaration of policy

Currentness

It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 951; Pub.L. 85-315, Part V, § 152, Sept. 9, 1957, 71 Stat. 638; Pub.L. 90-274, § 101, Mar. 27, 1968, 82 Stat. 54.)

28 U.S.C.A. § 1861, 28 USCA § 1861
Current through P.L. 118-78. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 121. Juries; Trial by Jury (Refs & Annos)

28 U.S.C.A. § 1862

§ 1862. Discrimination prohibited

Currentness

No citizen shall be excluded from service as a grand or petit juror in the district courts of the United States or in the Court of International Trade on account of race, color, religion, sex, national origin, or economic status.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 952; Pub.L. 90-274, § 101, Mar. 27, 1968, 82 Stat. 54; Pub.L. 96-417, Title III, § 302(c), Oct. 10, 1980, 94 Stat. 1739.)

28 U.S.C.A. § 1862, 28 USCA § 1862
Current through P.L. 118-78. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 121. Juries; Trial by Jury (Refs & Annos)

28 U.S.C.A. § 1863

§ 1863. Plan for random jury selection

Currentness

(a) Each United States district court shall devise and place into operation a written plan for random selection of grand and petit jurors that shall be designed to achieve the objectives of sections 1861 and 1862 of this title, and that shall otherwise comply with the provisions of this title. The plan shall be placed into operation after approval by a reviewing panel consisting of the members of the judicial council of the circuit and either the chief judge of the district whose plan is being reviewed or such other active district judge of that district as the chief judge of the district may designate. The panel shall examine the plan to ascertain that it complies with the provisions of this title. If the reviewing panel finds that the plan does not comply, the panel shall state the particulars in which the plan fails to comply and direct the district court to present within a reasonable time an alternative plan remedying the defect or defects. Separate plans may be adopted for each division or combination of divisions within a judicial district. The district court may modify a plan at any time and it shall modify the plan when so directed by the reviewing panel. The district court shall promptly notify the panel, the Administrative Office of the United States Courts, and the Attorney General of the United States, of the initial adoption and future modifications of the plan by filing copies therewith. Modifications of the plan made at the instance of the district court shall become effective after approval by the panel. Each district court shall submit a report on the jury selection process within its jurisdiction to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may specify. The Judicial Conference of the United States may, from time to time, adopt rules and regulations governing the provisions and the operation of the plans formulated under this title.

(b) Among other things, such plan shall--

(1) either establish a jury commission, or authorize the clerk of the court, to manage the jury selection process. If the plan establishes a jury commission, the district court shall appoint one citizen to serve with the clerk of the court as the jury commission: *Provided, however*, That the plan for the District of Columbia may establish a jury commission consisting of three citizens. The citizen jury commissioner shall not belong to the same political party as the clerk serving with him. The clerk or the jury commission, as the case may be, shall act under the supervision and control of the chief judge of the district court or such other judge of the district court as the plan may provide. Each jury commissioner shall, during his tenure in office, reside in the judicial district or division for which he is appointed. Each citizen jury commissioner shall receive compensation to be fixed by the district court plan at a rate not to exceed $50 per day for each day necessarily employed in the performance of his duties, plus reimbursement for travel, subsistence, and other necessary expenses incurred by him in the performance of such duties. The Judicial Conference of the United States may establish standards for allowance of travel, subsistence, and other necessary expenses incurred by jury commissioners.

(2) specify whether the names of prospective jurors shall be selected from the voter registration lists or the lists of actual voters of the political subdivisions within the district or division. The plan shall prescribe some other source or sources of names in addition to voter lists where necessary to foster the policy and protect the rights secured by sections 1861 and 1862

of this title. The plan for the District of Columbia may require the names of prospective jurors to be selected from the city directory rather than from voter lists. The plans for the districts of Puerto Rico and the Canal Zone may prescribe some other source or sources of names of prospective jurors in lieu of voter lists, the use of which shall be consistent with the policies declared and rights secured by sections 1861 and 1862 of this title. The plan for the district of Massachusetts may require the names of prospective jurors to be selected from the resident list provided for in chapter 234A, Massachusetts General Laws, or comparable authority, rather than from voter lists.

(3) specify detailed procedures to be followed by the jury commission or clerk in selecting names from the sources specified in paragraph (2) of this subsection. These procedures shall be designed to ensure the random selection of a fair cross section of the persons residing in the community in the district or division wherein the court convenes. They shall ensure that names of persons residing in each of the counties, parishes, or similar political subdivisions within the judicial district or division are placed in a master jury wheel; and shall ensure that each county, parish, or similar political subdivision within the district or division is substantially proportionally represented in the master jury wheel for that judicial district, division, or combination of divisions. For the purposes of determining proportional representation in the master jury wheel, either the number of actual voters at the last general election in each county, parish, or similar political subdivision, or the number of registered voters if registration of voters is uniformly required throughout the district or division, may be used.

(4) provide for a master jury wheel (or a device similar in purpose and function) into which the names of those randomly selected shall be placed. The plan shall fix a minimum number of names to be placed initially in the master jury wheel, which shall be at least one-half of 1 per centum of the total number of persons on the lists used as a source of names for the district or division; but if this number of names is believed to be cumbersome and unnecessary, the plan may fix a smaller number of names to be placed in the master wheel, but in no event less than one thousand. The chief judge of the district court, or such other district court judge as the plan may provide, may order additional names to be placed in the master jury wheel from time to time as necessary. The plan shall provide for periodic emptying and refilling of the master jury wheel at specified times, the interval for which shall not exceed four years.

(5)(A) except as provided in subparagraph (B), specify those groups of persons or occupational classes whose members shall, on individual request therefor, be excused from jury service. Such groups or classes shall be excused only if the district court finds, and the plan states, that jury service by such class or group would entail undue hardship or extreme inconvenience to the members thereof, and excuse of members thereof would not be inconsistent with sections 1861 and 1862 of this title.

(B) specify that volunteer safety personnel, upon individual request, shall be excused from jury service. For purposes of this subparagraph, the term "volunteer safety personnel" means individuals serving a public agency (as defined in section 1203(6) of title I of the Omnibus Crime Control and Safe Streets Act of 1968) in an official capacity, without compensation, as firefighters or members of a rescue squad or ambulance crew.

(6) specify that the following persons are barred from jury service on the ground that they are exempt: (A) members in active service in the Armed Forces of the United States; (B) members of the fire or police departments of any State, the District of Columbia, any territory or possession of the United States, or any subdivision of a State, the District of Columbia, or such territory or possession; (C) public officers in the executive, legislative, or judicial branches of the Government of the United States, or of any State, the District of Columbia, any territory or possession of the United States, or any subdivision of a State, the District of Columbia, or such territory or possession, who are actively engaged in the performance of official duties.

(7) fix the time when the names drawn from the qualified jury wheel shall be disclosed to parties and to the public. If the plan permits these names to be made public, it may nevertheless permit the chief judge of the district court, or such other district court judge as the plan may provide, to keep these names confidential in any case where the interests of justice so require.

(8) specify the procedures to be followed by the clerk or jury commission in assigning persons whose names have been drawn from the qualified jury wheel to grand and petit jury panels.

(c) The initial plan shall be devised by each district court and transmitted to the reviewing panel specified in subsection (a) of this section within one hundred and twenty days of the date of enactment of the Jury Selection and Service Act of 1968. The panel shall approve or direct the modification of each plan so submitted within sixty days thereafter. Each plan or modification made at the direction of the panel shall become effective after approval at such time thereafter as the panel directs, in no event to exceed ninety days from the date of approval. Modifications made at the instance of the district court under subsection (a) of this section shall be effective at such time thereafter as the panel directs, in no event to exceed ninety days from the date of modification.

(d) State, local, and Federal officials having custody, possession, or control of voter registration lists, lists of actual voters, or other appropriate records shall make such lists and records available to the jury commission or clerks for inspection, reproduction, and copying at all reasonable times as the commission or clerk may deem necessary and proper for the performance of duties under this title. The district courts shall have jurisdiction upon application by the Attorney General of the United States to compel compliance with this subsection by appropriate process.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 952; Pub.L. 90-274, § 101, Mar. 27, 1968, 82 Stat. 54; Pub.L. 92-269, § 2, Apr. 6, 1972, 86 Stat. 117; Pub.L. 95-572, § 2(a), Nov. 2, 1978, 92 Stat. 2453; Pub.L. 100-702, Title VIII, § 802(b), (c), Nov. 19, 1988, 102 Stat. 4657, 4658; Pub.L. 102-572, Title IV, § 401, Oct. 29, 1992, 106 Stat. 4511.)

28 U.S.C.A. § 1863, 28 USCA § 1863
Current through P.L. 118-78. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 121. Juries; Trial by Jury (Refs & Annos)

28 U.S.C.A. § 1864

§ 1864. Drawing of names from the master jury wheel; completion of juror qualification form

Effective: October 13, 2008
Currentness

(a) From time to time as directed by the district court, the clerk or a district judge shall draw at random from the master jury wheel the names of as many persons as may be required for jury service. The clerk or jury commission shall post a general notice for public review in the clerk's office and on the court's website explaining the process by which names are periodically and randomly drawn. The clerk or jury commission may, upon order of the court, prepare an alphabetical list of the names drawn from the master jury wheel. Any list so prepared shall not be disclosed to any person except pursuant to the district court plan or pursuant to section 1867 or 1868 of this title. The clerk or jury commission shall mail to every person whose name is drawn from the master wheel a juror qualification form accompanied by instructions to fill out and return the form, duly signed and sworn, to the clerk or jury commission by mail within ten days. If the person is unable to fill out the form, another shall do it for him, and shall indicate that he has done so and the reason therefor. In any case in which it appears that there is an omission, ambiguity, or error in a form, the clerk or jury commission shall return the form with instructions to the person to make such additions or corrections as may be necessary and to return the form to the clerk or jury commission within ten days. Any person who fails to return a completed juror qualification form as instructed may be summoned by the clerk or jury commission forthwith to appear before the clerk or jury commission to fill out a juror qualification form. A person summoned to appear because of failure to return a juror qualification form as instructed who personally appears and executes a juror qualification form before the clerk or jury commission may, at the discretion of the district court, except where his prior failure to execute and mail such form was willful, be entitled to receive for such appearance the same fees and travel allowances paid to jurors under section 1871 of this title. At the time of his appearance for jury service, any person may be required to fill out another juror qualification form in the presence of the jury commission or the clerk or the court, at which time, in such cases as it appears warranted, the person may be questioned, but only with regard to his responses to questions contained on the form. Any information thus acquired by the clerk or jury commission may be noted on the juror qualification form and transmitted to the chief judge or such district court judge as the plan may provide.

(b) Any person summoned pursuant to subsection (a) of this section who fails to appear as directed shall be ordered by the district court forthwith to appear and show cause for his failure to comply with the summons. Any person who fails to appear pursuant to such order or who fails to show good cause for noncompliance with the summons may be fined not more than $1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof. Any person who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror may be fined not more than $1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 952; Pub.L. 90-274, § 101, Mar. 27, 1968, 82 Stat. 57; Pub.L. 100-702, Title VIII, § 803(a), Nov. 19, 1988, 102 Stat. 4658; Pub.L. 110-406, §§ 5(a), 17(a), Oct. 13, 2008, 122 Stat. 4292, 4295.)

28 U.S.C.A. § 1864, 28 USCA § 1864
Current through P.L. 118-78. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 121. Juries; Trial by Jury (Refs & Annos)

28 U.S.C.A. § 1865

§ 1865. Qualifications for jury service

Effective: November 13, 2000
Currentness

(a) The chief judge of the district court, or such other district court judge as the plan may provide, on his initiative or upon recommendation of the clerk or jury commission, or the clerk under supervision of the court if the court's jury selection plan so authorizes, shall determine solely on the basis of information provided on the juror qualification form and other competent evidence whether a person is unqualified for, or exempt, or to be excused from jury service. The clerk shall enter such determination in the space provided on the juror qualification form and in any alphabetical list of names drawn from the master jury wheel. If a person did not appear in response to a summons, such fact shall be noted on said list.

(b) In making such determination the chief judge of the district court, or such other district court judge as the plan may provide, or the clerk if the court's jury selection plan so provides, shall deem any person qualified to serve on grand and petit juries in the district court unless he--

(1) is not a citizen of the United States eighteen years old who has resided for a period of one year within the judicial district;

(2) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

(3) is unable to speak the English language;

(4) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service; or

(5) has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of, a crime punishable by imprisonment for more than one year and his civil rights have not been restored.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 952; Pub.L. 90-274, § 101, Mar. 27, 1968, 82 Stat. 58; Pub.L. 92-269, § 1, Apr. 6, 1972, 86 Stat. 117; Pub.L. 95-572, § 3(a), Nov. 2, 1978, 92 Stat. 2453; Pub.L. 100-702, Title VIII, § 803(b), Nov. 19, 1988, 102 Stat. 4658; Pub.L. 106-518, Title III, § 305, Nov. 13, 2000, 114 Stat. 2418.)

28 U.S.C.A. § 1865, 28 USCA § 1865

Current through P.L. 118-78. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 121. Juries; Trial by Jury (Refs & Annos)

28 U.S.C.A. § 1866

§ 1866. Selection and summoning of jury panels

Effective: October 13, 2008
Currentness

(a) The jury commission, or in the absence thereof the clerk, shall maintain a qualified jury wheel and shall place in such wheel names of all persons drawn from the master jury wheel who are determined to be qualified as jurors and not exempt or excused pursuant to the district court plan. From time to time, the jury commission or the clerk shall draw at random from the qualified jury wheel such number of names of persons as may be required for assignment to grand and petit jury panels. The clerk or jury commission shall post a general notice for public review in the clerk's office and on the court's website explaining the process by which names are periodically and randomly drawn. The jury commission or the clerk shall prepare a separate list of names of persons assigned to each grand and petit jury panel.

(b) When the court orders a grand or petit jury to be drawn, the clerk or jury commission or their duly designated deputies shall issue summonses for the required number of jurors.

Each person drawn for jury service may be served personally, or by registered, certified, or first-class mail addressed to such person at his usual residence or business address.

If such service is made personally, the summons shall be delivered by the clerk or the jury commission or their duly designated deputies to the marshal who shall make such service.

If such service is made by mail, the summons may be served by the marshal or by the clerk, the jury commission or their duly designated deputies, who shall make affidavit of service and shall attach thereto any receipt from the addressee for a registered or certified summons.

(c) Except as provided in section 1865 of this title or in any jury selection plan provision adopted pursuant to paragraph (5) or (6) of section 1863(b) of this title, no person or class of persons shall be disqualified, excluded, excused, or exempt from service as jurors: *Provided*, That any person summoned for jury service may be (1) excused by the court, or by the clerk under supervision of the court if the court's jury selection plan so authorizes, upon a showing of undue hardship or extreme inconvenience, for such period as the court deems necessary, at the conclusion of which such person either shall be summoned again for jury service under subsections (b) and (c) of this section or, if the court's jury selection plan so provides, the name of such person shall be reinserted into the qualified jury wheel for selection pursuant to subsection (a) of this section, or (2) excluded by the court on the ground that such person may be unable to render impartial jury service or that his service as a juror would be likely to disrupt the proceedings, or (3) excluded upon peremptory challenge as provided by law, or (4) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown, or (5) excluded upon determination by the court that his service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations. No person shall be excluded under clause (5) of this subsection unless the judge, in open court, determines that such is warranted and that exclusion of the person will not be inconsistent with sections 1861 and 1862 of this

title. The number of persons excluded under clause (5) of this subsection shall not exceed one per centum of the number of persons who return executed jury qualification forms during the period, specified in the plan, between two consecutive fillings of the master jury wheel. The names of persons excluded under clause (5) of this subsection, together with detailed explanations for the exclusions, shall be forwarded immediately to the judicial council of the circuit, which shall have the power to make any appropriate order, prospective or retroactive, to redress any misapplication of clause (5) of this subsection, but otherwise exclusions effectuated under such clause shall not be subject to challenge under the provisions of this title. Any person excluded from a particular jury under clause (2), (3), or (4) of this subsection shall be eligible to sit on another jury if the basis for his initial exclusion would not be relevant to his ability to serve on such other jury.

(d) Whenever a person is disqualified, excused, exempt, or excluded from jury service, the jury commission or clerk shall note in the space provided on his juror qualification form or on the juror's card drawn from the qualified jury wheel the specific reason therefor.

(e) In any two-year period, no person shall be required to (1) serve or attend court for prospective service as a petit juror for a total of more than thirty days, except when necessary to complete service in a particular case, or (2) serve on more than one grand jury, or (3) serve as both a grand and petit juror.

(f) When there is an unanticipated shortage of available petit jurors drawn from the qualified jury wheel, the court may require the marshal to summon a sufficient number of petit jurors selected at random from the voter registration lists, lists of actual voters, or other lists specified in the plan, in a manner ordered by the court consistent with sections 1861 and 1862 of this title.

(g) Any person summoned for jury service who fails to appear as directed may be ordered by the district court to appear forthwith and show cause for failure to comply with the summons. Any person who fails to show good cause for noncompliance with a summons may be fined not more than $1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 952; May 24, 1949, c. 139, § 96, 63 Stat. 103; Pub.L. 90-274, § 101, Mar. 27, 1968, 82 Stat. 58; Pub.L. 91-543, Dec. 11, 1970, 84 Stat. 1408; Pub.L. 95-572, § 2(b), Nov. 2, 1978, 92 Stat. 2453; Pub.L. 97-463, § 2, Jan. 12, 1983, 96 Stat. 2531; Pub.L. 100-702, Title VIII, § 801, Nov. 19, 1988, 102 Stat. 4657; Pub.L. 110-406, §§ 4, 5(b), 17(b), Oct. 13, 2008, 122 Stat. 4292, 4295.)

28 U.S.C.A. § 1866, 28 USCA § 1866
Current through P.L. 118-78. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 121. Juries; Trial by Jury (Refs & Annos)

28 U.S.C.A. § 1867

§ 1867. Challenging compliance with selection procedures

Currentness

(a) In criminal cases, before the voir dire examination begins, or within seven days after the defendant discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, the defendant may move to dismiss the indictment or stay the proceedings against him on the ground of substantial failure to comply with the provisions of this title in selecting the grand or petit jury.

(b) In criminal cases, before the voir dire examination begins, or within seven days after the Attorney General of the United States discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, the Attorney General may move to dismiss the indictment or stay the proceedings on the ground of substantial failure to comply with the provisions of this title in selecting the grand or petit jury.

(c) In civil cases, before the voir dire examination begins, or within seven days after the party discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, any party may move to stay the proceedings on the ground of substantial failure to comply with the provisions of this title in selecting the petit jury.

(d) Upon motion filed under subsection (a), (b), or (c) of this section, containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with the provisions of this title, the moving party shall be entitled to present in support of such motion the testimony of the jury commission or clerk, if available, any relevant records and papers not public or otherwise available used by the jury commissioner or clerk, and any other relevant evidence. If the court determines that there has been a substantial failure to comply with the provisions of this title in selecting the grand jury, the court shall stay the proceedings pending the selection of a grand jury in conformity with this title or dismiss the indictment, whichever is appropriate. If the court determines that there has been a substantial failure to comply with the provisions of this title in selecting the petit jury, the court shall stay the proceedings pending the selection of a petit jury in conformity with this title.

(e) The procedures prescribed by this section shall be the exclusive means by which a person accused of a Federal crime, the Attorney General of the United States or a party in a civil case may challenge any jury on the ground that such jury was not selected in conformity with the provisions of this title. Nothing in this section shall preclude any person or the United States from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin or economic status in the selection of persons for service on grand or petit juries.

(f) The contents of records or papers used by the jury commission or clerk in connection with the jury selection process shall not be disclosed, except pursuant to the district court plan or as may be necessary in the preparation or presentation of a motion under subsection (a), (b), or (c) of this section, until after the master jury wheel has been emptied and refilled pursuant to section

1863(b)(4) of this title and all persons selected to serve as jurors before the master wheel was emptied have completed such service. The parties in a case shall be allowed to inspect, reproduce, and copy such records or papers at all reasonable times during the preparation and pendency of such a motion. Any person who discloses the contents of any record or paper in violation of this subsection may be fined not more than $1,000 or imprisoned not more than one year, or both.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 953; Pub.L. 85-259, Sept. 2, 1957, 71 Stat. 583; Pub.L. 90-274, § 101, Mar. 27, 1968, 82 Stat. 59.)

28 U.S.C.A. § 1867, 28 USCA § 1867
Current through P.L. 118-78. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 121. Juries; Trial by Jury (Refs & Annos)

28 U.S.C.A. § 1868

§ 1868. Maintenance and inspection of records

Currentness

After the master jury wheel is emptied and refilled pursuant to section 1863(b)(4) of this title, and after all persons selected to serve as jurors before the master wheel was emptied have completed such service, all records and papers compiled and maintained by the jury commission or clerk before the master wheel was emptied shall be preserved in the custody of the clerk for four years or for such longer period as may be ordered by a court, and shall be available for public inspection for the purpose of determining the validity of the selection of any jury.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 953; Pub.L. 90-274, § 101, Mar. 27, 1968, 82 Stat. 60.)

28 U.S.C.A. § 1868, 28 USCA § 1868
Current through P.L. 118-78. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 121. Juries; Trial by Jury (Refs & Annos)

28 U.S.C.A. § 1869

§ 1869. Definitions

Effective: October 13, 2008
Currentness

For purposes of this chapter--

(a) "clerk" and "clerk of the court" shall mean the clerk of the district court of the United States, any authorized deputy clerk, and any other person authorized by the court to assist the clerk in the performance of functions under this chapter;

(b) "chief judge" shall mean the chief judge of any district court of the United States;

(c) "voter registration lists" shall mean the official records maintained by State or local election officials of persons registered to vote in either the most recent State or the most recent Federal general election, or, in the case of a State or political subdivision thereof that does not require registration as a prerequisite to voting, other official lists of persons qualified to vote in such election. The term shall also include the list of eligible voters maintained by any Federal examiner pursuant to the Voting Rights Act of 1965 where the names on such list have not been included on the official registration lists or other official lists maintained by the appropriate State or local officials. With respect to the districts of Guam and the Virgin Islands, "voter registration lists" shall mean the official records maintained by territorial election officials of persons registered to vote in the most recent territorial general election;

(d) "lists of actual voters" shall mean the official lists of persons actually voting in either the most recent State or the most recent Federal general election;

(e) "division" shall mean: (1) one or more statutory divisions of a judicial district; or (2) in statutory divisions that contain more than one place of holding court, or in judicial districts where there are no statutory divisions, such counties, parishes, or similar political subdivisions surrounding the places where court is held as the district court plan shall determine: *Provided*, That each county, parish, or similar political subdivision shall be included in some such division;

(f) "district court of the United States", "district court", and "court" shall mean any district court established by chapter 5 of this title, and any court which is created by Act of Congress in a territory and is invested with any jurisdiction of a district court established by chapter 5 of this title;

(g) "jury wheel" shall include any device or system similar in purpose or function, such as a properly programed electronic data processing system or device;

(h) "juror qualification form" shall mean a form prescribed by the Administrative Office of the United States Courts and approved by the Judicial Conference of the United States, which shall elicit the name, address, age, race, occupation, education, length of residence within the judicial district, distance from residence to place of holding court, prior jury service, and citizenship of a potential juror, and whether he should be excused or exempted from jury service, has any physical or mental infirmity impairing his capacity to serve as juror, is able to read, write, speak, and understand the English language, has pending against him any charge for the commission of a State or Federal criminal offense punishable by imprisonment for more than one year, or has been convicted in any State or Federal court of record of a crime punishable by imprisonment for more than one year and has not had his civil rights restored. The form shall request, but not require, any other information not inconsistent with the provisions of this title and required by the district court plan in the interests of the sound administration of justice. The form shall also elicit the sworn statement that his responses are true to the best of his knowledge. Notarization shall not be required. The form shall contain words clearly informing the person that the furnishing of any information with respect to his religion, national origin, or economic status is not a prerequisite to his qualification for jury service, that such information need not be furnished if the person finds it objectionable to do so, and that information concerning race is required solely to enforce nondiscrimination in jury selection and has no bearing on an individual's qualification for jury service.

(i) "public officer" shall mean a person who is either elected to public office or who is directly appointed by a person elected to public office;

(j) "undue hardship or extreme inconvenience", as a basis for excuse from immediate jury service under section 1866(c)(1) of this chapter, shall mean great distance, either in miles or traveltime, from the place of holding court, grave illness in the family or any other emergency which outweighs in immediacy and urgency the obligation to serve as a juror when summoned, or any other factor which the court determines to constitute an undue hardship or to create an extreme inconvenience to the juror; and in addition, in situations where it is anticipated that a trial or grand jury proceeding may require more than thirty days of service, the court may consider, as a further basis for temporary excuse, severe economic hardship to an employer which would result from the absence of a key employee during the period of such service; and

(k) "jury summons" shall mean a summons issued by a clerk of court, jury commission, or their duly designated deputies, containing either a preprinted or stamped seal of court, and containing the name of the issuing clerk imprinted in preprinted, type, or facsimile manner on the summons or the envelopes transmitting the summons.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 953; Pub.L. 88-139, § 2, Oct. 16, 1963, 77 Stat. 248; Pub.L. 90-274, § 101, Mar. 27, 1968, 82 Stat. 61; Pub.L. 91-358, Title I, § 172(b), July 29, 1970, 84 Stat. 590; Pub.L. 92-437, § 1, Sept. 29, 1972, 86 Stat. 740; Pub.L. 95-572, §§ 3(b), 4, Nov. 2, 1978, 92 Stat. 2453; Pub.L. 95-598, Title II, § 243, Nov. 6, 1978, 92 Stat. 2671; Pub.L. 99-650, § 3, Nov. 14, 1986, 100 Stat. 3641; Pub.L. 100-702, Title VIII, §§ 802(a), 804, Nov. 19, 1988, 102 Stat. 4657, 4658; Pub.L. 110-406, § 5(c), Oct. 13, 2008, 122 Stat. 4292.)

28 U.S.C.A. § 1869, 28 USCA § 1869
Current through P.L. 118-78. Some statute sections may be more current, see credits for details.

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 121. Juries; Trial by Jury (Refs & Annos)

28 U.S.C.A. § 1870

§ 1870. Challenges

Currentness

In civil cases, each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purposes of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly.

All challenges for cause or favor, whether to the array or panel or to individual jurors, shall be determined by the court.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 953; Pub.L. 86-282, Sept. 16, 1959, 73 Stat. 565.)

28 U.S.C.A. § 1870, 28 USCA § 1870
Current through P.L. 118-78. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 121. Juries; Trial by Jury (Refs & Annos)

28 U.S.C.A. § 1871

§ 1871. Fees

Currentness

(a) Grand and petit jurors in district courts appearing pursuant to this chapter shall be paid the fees and allowances provided by this section. The requisite fees and allowances shall be disbursed on the certificate of the clerk of court in accordance with the procedure established by the Director of the Administrative Office of the United States Courts. Attendance fees for extended service under subsection (b) of this section shall be certified by the clerk only upon the order of a district judge.

(b)(1) A juror shall be paid an attendance fee of $50 per day for actual attendance at the place of trial or hearing. A juror shall also be paid the attendance fee for the time necessarily occupied in going to and returning from such place at the beginning and end of such service or at any time during such service.

(2) A petit juror required to attend more than ten days in hearing one case may be paid, in the discretion of the trial judge, an additional fee, not exceeding $10 more than the attendance fee, for each day in excess of ten days on which he is required to hear such case.

(3) A grand juror required to attend more than forty-five days of actual service may be paid, in the discretion of the district judge in charge of the particular grand jury, an additional fee, not exceeding $10 more than the attendance fee, for each day in excess of forty-five days of actual service.

(4) A grand or petit juror required to attend more than ten days of actual service may be paid, in the discretion of the judge, the appropriate fees at the end of the first ten days and at the end of every ten days of service thereafter.

(5) Certification of additional attendance fees may be ordered by the judge to be made effective commencing on the first day of extended service, without reference to the date of such certification.

(c)(1) A travel allowance not to exceed the maximum rate per mile that the Director of the Administrative Office of the United States Courts has prescribed pursuant to section 604(a)(7) of this title for payment to supporting court personnel in travel status using privately owned automobiles shall be paid to each juror, regardless of the mode of transportation actually employed. The prescribed rate shall be paid for the distance necessarily traveled to and from a juror's residence by the shortest practical route in going to and returning from the place of service. Actual mileage in full at the prescribed rate is payable at the beginning and at the end of a juror's term of service.

(2) The Director shall promulgate rules regulating interim travel allowances to jurors. Distances traveled to and from court should coincide with the shortest practical route.

(3) Toll charges for toll roads, bridges, tunnels, and ferries shall be paid in full to the juror incurring such charges. In the discretion of the court, reasonable parking fees may be paid to the juror incurring such fees upon presentation of a valid parking receipt. Parking fees shall not be included in any tabulation of mileage cost allowances.

(4) Any juror who travels to district court pursuant to summons in an area outside of the contiguous forty-eight States of the United States shall be paid the travel expenses provided under this section, or actual reasonable transportation expenses subject to the discretion of the district judge or clerk of court as circumstances indicate, exercising due regard for the mode of transportation, the availability of alternative modes, and the shortest practical route between residence and court.

(5) A grand juror who travels to district court pursuant to a summons may be paid the travel expenses provided under this section or, under guidelines established by the Judicial Conference, the actual reasonable costs of travel by aircraft when travel by other means is not feasible and when certified by the chief judge of the district court in which the grand juror serves.

(d)(1) A subsistence allowance covering meals and lodging of jurors shall be established from time to time by the Director of the Administrative Office of the United States Courts pursuant to section 604(a)(7) of this title, except that such allowance shall not exceed the allowance for supporting court personnel in travel status in the same geographical area. Claims for such allowance shall not require itemization.

(2) A subsistence allowance shall be paid to a juror when an overnight stay is required at the place of holding court, and for the time necessarily spent in traveling to and from the place of attendance if an overnight stay is required.

(3) A subsistence allowance for jurors serving in district courts outside of the contiguous forty-eight States of the United States shall be allowed at a rate not to exceed that per diem allowance which is paid to supporting court personnel in travel status in those areas where the Director of the Administrative Office of the United States Courts has prescribed an increased per diem fee pursuant to section 604(a)(7) of this title.

(e) During any period in which a jury is ordered to be kept together and not to separate, the actual cost of subsistence shall be paid upon the order of the court in lieu of the subsistence allowances payable under subsection (d) of this section. Such allowance for the jurors ordered to be kept separate or sequestered shall include the cost of meals, lodging, and other expenditures ordered in the discretion of the court for their convenience and comfort.

(f) A juror who must necessarily use public transportation in traveling to and from court, the full cost of which is not met by the transportation expenses allowable under subsection (c) of this section on account of the short distance traveled in miles, may be paid, in the discretion of the court, the actual reasonable expense of such public transportation, pursuant to the methods of payment provided by this section. Jurors who are required to remain at the court beyond the normal business closing hour for deliberation or for any other reason may be transported to their homes, or to temporary lodgings where such lodgings are ordered by the court, in a manner directed by the clerk and paid from funds authorized under this section.

(g) The Director of the Administrative Office of the United States Courts shall promulgate such regulations as may be necessary to carry out his authority under this section.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 953; May 24, 1949, c. 139, § 97, 63 Stat. 103; July 14, 1949, c. 333, 63 Stat. 411; Pub.L. 85-299, Sept. 7, 1957, 71 Stat. 618; Pub.L. 89-165, Sept. 2, 1965, 79 Stat. 645; Pub.L. 90-274, § 102(a), Mar. 27, 1968, 82 Stat. 62; Pub.L. 95-572, § 5, Nov. 2, 1978, 92 Stat. 2454; Pub.L. 101-650, Title III, § 314(b), Dec. 1, 1990, 104 Stat. 5115; Pub.L. 102-572, Title IV, § 402, Oct. 29, 1992, 106 Stat. 4511; Pub.L. 110-406, § 3(a), Oct. 13, 2008, 122 Stat. 4292; Pub.L. 115-141, Div. E, Title III, § 307(a), Mar. 23, 2018, 132 Stat. 556.)

28 U.S.C.A. § 1871, 28 USCA § 1871
Current through P.L. 118-78. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 121. Juries; Trial by Jury (Refs & Annos)

28 U.S.C.A. § 1872

§ 1872. Issues of fact in Supreme Court

Currentness

In all original actions at law in the Supreme Court against citizens of the United States, issues of fact shall be tried by a jury.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 953.)

28 U.S.C.A. § 1872, 28 USCA § 1872
Current through P.L. 118-78. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 121. Juries; Trial by Jury (Refs & Annos)

28 U.S.C.A. § 1873

§ 1873. Admiralty and maritime cases

Currentness

In any case of admiralty and maritime jurisdiction relating to any matter of contract or tort arising upon or concerning any vessel of twenty tons or upward, enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between places in different states upon the lakes and navigable waters connecting said lakes, the trial of all issues of fact shall be by jury if either party demands it.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 953.)

28 U.S.C.A. § 1873, 28 USCA § 1873
Current through P.L. 118-78. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 121. Juries; Trial by Jury (Refs & Annos)

28 U.S.C.A. § 1874

§ 1874. Actions on bonds and specialties

Currentness

In all actions to recover the forfeiture annexed to any articles of agreement, covenant, bond, or other specialty, wherein the forfeiture, breach, or nonperformance appears by default or confession of the defendant, the court shall render judgment for the plaintiff for such amount as is due. If the sum is uncertain, it shall, upon request of either party, be assessed by a jury.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 953.)

28 U.S.C.A. § 1874, 28 USCA § 1874
Current through P.L. 118-78. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 121. Juries; Trial by Jury (Refs & Annos)

28 U.S.C.A. § 1875

§ 1875. Protection of jurors' employment

Effective: October 13, 2008
Currentness

(a) No employer shall discharge, threaten to discharge, intimidate, or coerce any permanent employee by reason of such employee's jury service, or the attendance or scheduled attendance in connection with such service, in any court of the United States.

(b) Any employer who violates the provisions of this section--

(1) shall be liable for damages for any loss of wages or other benefits suffered by an employee by reason of such violation;

(2) may be enjoined from further violations of this section and ordered to provide other appropriate relief, including but not limited to the reinstatement of any employee discharged by reason of his jury service; and

(3) shall be subject to a civil penalty of not more than $5,000 for each violation as to each employee, and may be ordered to perform community service.

(c) Any individual who is reinstated to a position of employment in accordance with the provisions of this section shall be considered as having been on furlough or leave of absence during his period of jury service, shall be reinstated to his position of employment without loss of seniority, and shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such individual entered upon jury service.

(d)(1) An individual claiming that his employer has violated the provisions of this section may make application to the district court for the district in which such employer maintains a place of business and the court shall, upon finding probable merit in such claim, appoint counsel to represent such individual in any action in the district court necessary to the resolution of such claim. Such counsel shall be compensated and necessary expenses repaid to the extent provided by section 3006A of title 18, United States Code.

(2) In any action or proceeding under this section, the court may award a prevailing employee who brings such action by retained counsel a reasonable attorney's fee as part of the costs. The court may tax a defendant employer, as costs payable to the court, the attorney fees and expenses incurred on behalf of a prevailing employee, where such costs were expended by the court pursuant

to paragraph (1) of this subsection. The court may award a prevailing employer a reasonable attorney's fee as part of the costs only if the court finds that the action is frivolous, vexatious, or brought in bad faith.

CREDIT(S)

(Added Pub.L. 95-572, § 6(a)(1), Nov. 2, 1978, 92 Stat. 2456; amended Pub.L. 97-463, § 1, Jan. 12, 1983, 96 Stat. 2531; Pub.L. 110-406, § 19, Oct. 13, 2008, 122 Stat. 4295.)

28 U.S.C.A. § 1875, 28 USCA § 1875
Current through P.L. 118-78. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 121. Juries; Trial by Jury (Refs & Annos)

28 U.S.C.A. § 1876

§ 1876. Trial by jury in the Court of International Trade

Currentness

(a) In any civil action in the Court of International Trade which is to be tried before a jury, the jury shall be selected in accordance with the provisions of this chapter and under the procedures set forth in the jury selection plan of the district court for the judicial district in which the case is to be tried.

(b) Whenever the Court of International Trade conducts a jury trial--

(1) the clerk of the district court for the judicial district in which the Court of International Trade is sitting, or an authorized deputy clerk, shall act as clerk of the Court of International Trade for the purposes of selecting and summoning the jury;

(2) the qualifications for jurors shall be the same as those established by section 1865(b) of this title for jurors in the district courts of the United States;

(3) each party shall be entitled to challenge jurors in accordance with section 1870 of this title; and

(4) jurors shall be compensated in accordance with section 1871 of this title.

CREDIT(S)

(Added Pub.L. 96-417, Title III, § 302(a), Oct. 10, 1980, 94 Stat. 1739.)

28 U.S.C.A. § 1876, 28 USCA § 1876
Current through P.L. 118-78. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 121. Juries; Trial by Jury (Refs & Annos)

28 U.S.C.A. § 1877

§ 1877. Protection of jurors

Currentness

(a) Subject to the provisions of this section and title 5 of the United States Code, subchapter 1 of chapter 81, title 5, United States Code, applies to a Federal grand or petit juror, except that entitlement to disability compensation payments does not commence until the day after the date of termination of service as a juror.

(b) In administering this section with respect to a juror covered by this section--

(1) a juror is deemed to receive monthly pay at the minimum rate for grade GS-2 of the General Schedule unless his actual pay as a Government employee while serving on court leave is higher, in which case monthly pay is determined in accordance with section 8114 of title 5, United States Code, and

(2) performance of duty as a juror includes that time when a juror is (A) in attendance at court pursuant to a summons, (B) in deliberation, (C) sequestered by order of a judge, or (D) at a site, by order of the court, for the taking of a view.

CREDIT(S)

(Added Pub.L. 97-463, § 3(1), Jan. 12, 1983, 96 Stat. 2531.)

28 U.S.C.A. § 1877, 28 USCA § 1877
Current through P.L. 118-78. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part V. Procedure
Chapter 121. Juries; Trial by Jury (Refs & Annos)

28 U.S.C.A. § 1878

§ 1878. Optional use of a one-step summoning and qualification procedure

Currentness

(a) At the option of each district court, jurors may be summoned and qualified in a single procedure, if the court's jury selection plan so authorizes, in lieu of the two separate procedures otherwise provided for by this chapter. Courts shall ensure that a one-step summoning and qualification procedure conducted under this section does not violate the policies and objectives set forth in sections 1861 and 1862 of this title.

(b) Jury selection conducted under this section shall be subject to challenge under section 1867 of this title for substantial failure to comply with the provisions of this title in selecting the jury. However, no challenge under section 1867 of this title shall lie solely on the basis that a jury was selected in accordance with a one-step summoning and qualification procedure authorized by this section.

CREDIT(S)

(Added Pub.L. 100-702, Title VIII, § 805(a), Nov. 19, 1988, 102 Stat. 4658; amended Pub.L. 102-572, Title IV, § 403(a), Oct. 29, 1992, 106 Stat. 4512.)

28 U.S.C.A. § 1878, 28 USCA § 1878
Current through P.L. 118-78. Some statute sections may be more current, see credits for details.

End of Document