

In the United States District Court
for the Northern District of Texas
Dallas Division

United States of America, §
Plaintiff, §
v. § Case No. 3:19-R-245-M
Timothy Bernard Tanner, §
Defendant. §
§

Unopposed Motion to Cancel 8 A.M. Hearing of May 29, 2020, and to Make Returned Juror Questionnaires, Juror Qualification Questionnaires, and Juror Information Forms a Part of the Sealed Record.

Defendant Timothy Bernard Tanner, by and through counsel, advises that he does not intend to present a live witness in support of his claims relating to the Jury Selection and Service Act and the Fair Cross Section guarantee of the Sixth Amendment. He accordingly requests that the Court decide the claims on the basis of the following documentary evidence:

1. The returned juror questionnaires, currently in possession of the Court, which Defendant moves be made a part of the record under seal;
2. The Juror Qualification Questionnaires and Juror Information Forms produced by the Court to the parties at 5:08 PM May 27, 2020, currently in possession of the Court, which Defendant moves be made a part of the record under seal, and
3. Exhibit B to the Supplement to the Motion for Continuance, an AO-12 form.

These documents establish two bases for relief.

First, as discussed in the Supplement to the Motion to Continue, the returned jury questionnaires show a large number of people invoking discretionary hardship exemptions, which destroys the random nature of jury selection required by 28 U.S.C. §1861.

Second, the questionnaires, Juror Qualification Questionnaires and Juror Information Forms, and AO-12's show that scheduling the trial at the local peak height of a pandemic has operated to systematically exclude men from jury service. These show that of the 36 jury summons and questionnaires sent to men in connection with the trial, only 24 men have responded. By contrast 51 of 64 women responded. The differential response rate (66.7% vs 79.7% for women) is too large to occur by chance. The likely effect of the pandemic on response rates is confirmed by the low rate of response to the questionnaires among all respondents. The court received responses to 75 of 100 questionnaires and summons. The average combined rate of undeliverable mail and non-response in similarly situated¹ courts is 19.7%. See Hon. Greg Mize, *et al*, *The State of the States Survey of Jury Improvement Efforts: a Compendium Effort* (April 2007) p. 22, Table 16, available at http://www.ncsc-jurystudies.org/data/assets/pdf_file/0016/5623/soscompendiumfinal.pdf, last visited May 28, 2020. The pandemic is obviously driving down response rates, and it is more likely than not based on the current evidence that it has done so more for men than women. The scheduling of the trial – which is abnormal for courts in the pandemic – has posed an affirmative barrier to jury service for men.

¹ That is, among courts serving populations of greater than 500,000 that require potential jurors to return a jury qualification form before sending a summons (“two-step courts”).

CONCLUSION

Defendant respectfully requests that the Court cancel tomorrow’s hearing and accept questionnaires and juror qualification questionnaires and juror information forms as a sealed part of the record.

Respectfully submitted,

JASON D. HAWKINS
Federal Public Defender
Northern District of Texas

/s/ Kevin Joel Page
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CERTIFICATE OF CONFERENCE

I certify that on May 11, 2020, I conferred with AUSA Bryan McKay and learned that the government is unopposed to this request.

/s/ Kevin Joel Page
KEVIN JOEL PAGE

CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2020, I electronically filed the foregoing document using the Court’s CM/ECF system, thereby providing service on attorneys of record.

/s/ Kevin Joel Page
KEVIN JOEL PAGE