

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-against-

MEMORANDUM OF LAW

20-cr-202 (DLI)

SAMANTHA SHADER,

Defendant

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MOTION TO INSPECT GRAND JURY RECORDS

Samantha Shader was indicted on June 11 by the first sitting grand jury since the courthouse closed in March due to Covid-19. The unusual circumstances of the indictment—that the grand jury was sitting in Central Islip as opposed to Brooklyn, and that most members of the public in the Eastern District of New York were still under a stay-at-home order—may have compromised the Ms. Shader’s right to a grand jury selected from a fair cross section of the community. Accordingly, through this motion and the declaration of statistician Jeffrey Martin enclosed as Exhibit A, Ms. Shader respectfully requests access to the records and papers used in connection with the constitution of the Master and Qualified Jury Wheels in the United States District Court for the Eastern District of New York, pursuant to the Fifth and Sixth Amendments to the United States Constitution and the Jury Selection and Service Act (“JSSA”), 28 U.S.C. §§ 1867(a) and (f). The requested records are detailed in Attachment 1 to the Martin Declaration. *See* Attachment 1 to Exhibit A.

Section 1867(f) of Title 28 of the United States Code allows a defendant to “inspect, reproduce, and copy . . . records or papers [used by the commission or clerk in connection with the jury selection process] at all reasonable times during the preparation and pendency of . . . a motion” to challenge the composition of the jury on the ground that it failed to reflect a fair

cross-section of the community. 28 U.S.C. §§ 1867(a), (f); *see also Test v. United States*, 420 U.S. 28, 30 (1975). Inspection of such materials is essential to a defendant’s ability to determine whether she has a potentially meritorious challenge. *Test*, 420 U.S. at 30. Therefore, “an unqualified right to inspection is required not only by the plain text of the statute, but also by the statute’s overall purpose of ensuring ‘grand and petit juries selected at random from a fair cross section of the community.’” *Id.* (quoting 28 U.S.C. § 1861(d)).

In order to invoke the right to inspect under Section 1867(f) and “[t]o avail himself of [the] right of access to otherwise unpublic jury selection records, a litigant needs only allege that he [or she] is preparing a motion challenging the jury selection procedures.” *United States v. Alden*, 776 F.2d 771, 773 (8th Cir. 1985) (internal citations omitted). Ms. Shader is not required to make any showing with respect to the probability of success of the motion. *See, e.g., United States v. Williamson*, 903 F.3d 124, 133 (D.C. Cir. 2018); *United States v. Royal*, 100 F.3d 1019, 1025 (1st Cir. 1996); *see also United States v. Gotti*, 2004 WL 2274712 (S.D.N.Y. 2004) (granting motion for discovery even absent any showing that information would reveal a violation).

We do not seek any personal identifying information for the individuals whose records are maintained by the jury clerk’s office. As such, the full set of records should be provided in the manner requested by the attached declaration. *See United States v. Saipov*, 17-cr-722 (VSB), 2020 WL 915808, at *3 (S.D.N.Y. Feb. 26, 2020) (granting similar request in full).

Pursuant to Section 1867(a), a defendant may raise a JSSA challenge “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.” *See* 28 U.S.C. § 1867(a). Although the Second Circuit has not considered what constitutes the timely

filing of a motion pursuant to the JSSA related to the composition of a grand jury, some courts have determined that the statute requires an attempt to inspect grand jury records within seven days of the filing of an indictment. *See Saipov*, 2020 WL at *2 (citing cases from the Eleventh Circuit, the Northern District of Florida, and the Western District of New York). Accordingly, we ask the Court to grant this timely request for inspection of records. A proposed order is enclosed as Exhibit B.

Finally, although we do not read Section 1867(a) as requiring that a motion to dismiss be filed within seven days of the indictment, in an abundance of caution we do hereby move to dismiss the indictment on the grounds that the grand jury procedures in this case violated Title 28 of the United States Code. We would additionally seek leave of the Court to supplement this motion to dismiss once we have had an opportunity to inspect the grand jury records that are the subject of the above request. Once the records are obtained, we will analyze them with the assistance of our expert to determine whether the grand jury plan procedures violated Ms. Shader’s right to a grand jury “selected at random from a fair cross-section of the community.” 28 U.S.C § 1861; *see also* 28 U.S.C. §§ 1863(b)(3), 1866(f).

CONCLUSION

For the foregoing reasons, the Court should endorse the enclosed proposed order.

DATED: June 18, 2020
Brooklyn, NY

Respectfully Submitted,

 /s/

Amanda David
Samuel Jacobson
Counsel to Samantha Shader
Federal Defenders of New York

Cc: AUSA Jonathan Algor (via ECF)
AUSA Ian Richardson (via ECF)
Samantha Shader (via Mail) (MDC Brooklyn)