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12
13 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

14 United States of America,
15
16 Plaintiff,

17 vs.

18 Joseph M. Arpaio,
19 Defendant.

2:16-CR-01012-SRB

**RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION FOR LEAVE
TO FILE MOTION FOR CHANGE OF
VENUE**

20 The defendant moves for a change of venue on the eve of trial based on anticipated
21 media coverage of his upcoming bench trial. He cites no legal authority at all in support
22 of his motion, much less any case suggesting that a change of venue is ever necessary to
23 preserve the impartiality of a *judge* as a factfinder as opposed to a *jury*. The defendant's
24 motion lacks merit and should be denied.

25 A change of venue based on pretrial publicity is generally warranted only where the
26 defendant can show presumed or actual prejudice from a tainted jury pool. *See Murray v.*
27 *Schriro*, 746 F.3d 418, 442 (9th Cir. 2014) (“When an impartial jury cannot be empaneled
28 due to pretrial publicity, a change of venue at the request of the defendant is appropriate.”)

1 (citing *Skilling v. United States*, 561 U.S. 358, 378 (2010)). Presumed prejudice requires
2 that the defendant show that a “wave of public passion makes a fair trial unlikely by the
3 jury,” or that the “trial atmosphere is utterly corrupted by press coverage.” *Id.* (quotation
4 marks omitted). Alternatively, actual prejudice is shown where “potential jurors who have
5 been exposed to pretrial publicity express bias or hostility toward the defendant that cannot
6 be cast aside.” *Id.* There is no jury pool to be tainted here; for this reason alone the
7 defendant’s motion should be denied.

8 To the extent the defendant’s motion is actually a request for the Court to recuse
9 itself, the defendant’s motion again fails. Though the defendant generally alleges that this
10 Court referred to “‘effectuat[ing]’ Judge Snow’s intent” at an initial status hearing, (ECF
11 No. 171 at 5), the defendant’s self-serving characterization of an unidentified, isolated
12 remark falls far short of “demonstrat[ing] such pervasive bias and prejudice that [it]
13 constitute[s] bias against a party.” *United States v. Wilkerson*, 208 F.3d 794, 797 (9th Cir.
14 2000) (holding that recusal was not necessary where defendant “failed to demonstrate . . . a
15 clear inability to render fair judgment” on the part of the trial court).

16 For the foregoing reasons, the government requests that the defendant’s motion be
17 denied.

18 Respectfully Submitted,

19 ANNALOU TIROL
20 Acting Chief, Public Integrity Section

21 By: /s/ John D. Keller

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on today's date, I electronically filed the foregoing via the CM/ECF system which will provide notice to counsel of record for the defendant.

/s/ John D. Keller
John D. Keller
Deputy Chief

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