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ATTORNEYS FOR THE DEFENDANT

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
JASON FONG,  
aka "asian\_ghazi,"  
aka "Jason Asian Ghazi,"  
aka "Mustafa Ahmed Al-Hakim,"  
  
Defendant.

No. CR 20-00146(A)-DOC  
  
JOINT PROPOSED QUESTIONS FOR JURY  
QUESTIONNAIRE  
  
Trial Date: January 17, 2023  
Trial Time: 8:30 a.m.  
Location: Courtroom of the  
Hon. David O.  
Carter

Plaintiff United States of America, by and through its counsel of record, the United States Attorney for the Central District of California and Assistant United States Attorney Christine M. Ro and National Security Division Counterterrorism Section Trial Attorney John Cella, and defendant Jason Fong ("defendant"), both individually and by and through his counsel of record, Karren Kenney and Charles Swift, hereby submit their request for a jury questionnaire. In

1 support of their request the parties have jointly prepared Proposed  
2 Questions for Jury Questionnaire to be provided to potential jurors  
3 in advance of voir dire, in lieu of attorney submitted or attorney  
4 led voir dire in the above-captioned case, attached hereto as Exhibit  
5 1.<sup>1</sup>

6 In support of the requested questionnaire, the parties jointly  
7 submit that use of a questionnaire is within this Court's sound  
8 discretion and that courts have allowed questionnaires for a variety  
9 of reasons. See e.g., United States v. Ashburn, No. 13-CR- 0303 (NGG),  
10 2014 U.S. Dist. LEXIS 158657, at \*57 (E.D.N.Y. Nov. 7, 2014) (to  
11 preserve judicial economy), Turner v. Murray, 476 U.S. 28 (1986)  
12 (interracial crime); Aldridge v. United States, 283 U.S. 308 (1931)  
13 (exploration of racial prejudice); United States v. Napoleone, 349  
14 F.2d 350 (3d Cir. 1965) (prejudice against liars); United States v.  
15 Baldwin, 607 F. 2d 1295 (9th Cir. 1979) (bias in favor of law  
16 enforcement officers); United States v. Washington, 819 F. 2d 221  
17 (9th Cir. 1987) (knowledge of government witnesses).

18  
19 Defendant respectfully submits that the use of a questionnaire  
20 is appropriate in this case for three specific reasons:<sup>2</sup>

21 First, is potential bias against the defendant. The Pew Research  
22

23  
24 <sup>1</sup> The attached questionnaire represents the parties agreed upon  
25 questions. The parties reserve the right to supplement questions by  
26 separate motion for inclusion in the proposed questionnaire for use  
during voir dire and/or to be permitted to ask follow-up questions of  
individual juror during voir dire, as necessary.

27 <sup>2</sup> The government does not agree with the three specific reasons  
28 listed herein, but the government does not object to the use of the  
proposed jury questionnaire.

1 Center in 2017 found that, "about half of Americans (49%) think at  
2 least "some" U.S. Muslims are anti-American, greater than the share  
3 who say "just a few" or "none" are anti-American, according to a  
4 January 2016 survey."<sup>3</sup> Because terrorism charges invoke strong  
5 feelings public, questionnaires have become a commonly used tool to  
6 uncover conscious and unconscious bias in cases involving terrorism  
7 related charges. See United States v. Muhanad Mahmoud AL Farekh, No.  
8 15-CR-268 (BMC), 2017 U.S. Dist. LEXIS 93169, at \*1 (E.D.N.Y. June  
9 15, 2017) (approving the use of a questionnaire and observing "[m]any  
10 courts, including this Court, have concluded the use of jury  
11 questionnaires are appropriate in terrorism cases.") The proposed  
12 questionnaire, similar to other questionnaires used in terrorism  
13 cases, seeks to elicit whether the prospective juror bias renders  
14 them unable to serve in the present case.

15  
16 The second reason is bias towards law enforcement. While  
17 questionnaires have been historically used to uncover a pro-law  
18 enforcement bias, the increasing politicization of law enforcement  
19 in general, and the FBI in particular, raises the equally concerning  
20 potential for anti-law enforcement bias. A Pew study in 2018 indicated  
21 that 26% percent of people view the FBI unfavorably.<sup>4</sup> Since 2017, the  
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24 <sup>3</sup> Lipka, Michael, Muslims and Islam: Key Findings in the U.S.  
25 and Around the World. Pew Research Center, August 9, 2017. Available  
26 at: <https://www.pewresearch.org/fact-tank/2017/08/09/muslims-and-islam-key-findings-in-the-u-s-and-around-the-world/>

27 <sup>4</sup> Growing Partisan Differences in Views of the FBI; Stark Divide  
28 Over ICE. Pew Report, July 24, 2018. Available at:  
<https://www.forbes.com/sites/adamandrzejewski/2021/11/18/fbi-and-other-agencies-paid-informants-548-million-in-recent-years-with-many-committing-authorized-crimes/?sh=4227e126f4dd>.

1 study notes that the share of Republicans with a positive view of the  
2 FBI has dropped 16%. In 2018, 44% of Republicans had unfavorable  
3 views of the FBI. Since the Pew study, the political climate  
4 culminating in FBI's search of former President Donald Trump's winter  
5 residence at Mar al Logo has seen an increase in divisiveness.  
6 Accordingly, the proposed questionnaire seeks to elicit whether the  
7 prospective juror bias renders them unable fairly evaluate the  
8 testimony in the present case.

9  
10 The final reason is efficiency. The experience of defense  
11 counsel is that for the reasons outlined above, the percentage of  
12 prospective cause challenges is greater in a terrorism case involving  
13 the facts present here. While a questionnaire does not eliminate the  
14 need for all questioning of individual jurors, it significantly  
15 streamlines the process. See United States v. Nacchio, No. 05-cr-  
16 00545-EWN, 2007 U.S. Dist. LEXIS 115687, at \*4 (D. Colo. Jan. 25,  
17 2007) (holding that "[a] questionnaire serves the purpose of  
18 efficiency, because it saves time and money for the judiciary and a  
19 significant number of prospective jurors by determining prior to voir  
20 dire which individuals cannot serve."

21 The parties respectfully request that potential jurors answer  
22 the questions listed below in writing, in advance of group voir dire.

