

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Hadiya AbdulSalaam, Individually	:	
and as Mother and Natural Guardian	:	
of Makeba Kristos, a minor, et al.,	:	Case No. 2:06-cv-413
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	JUDGE ALGENON L. MARBLEY
Franklin County Board	:	
of Commissioners, et al.,	:	Magistrate Judge Abel
	:	
Defendants.	:	

ORDER

This matter is before the Court of Plaintiffs’ Motion for Order Granting Leave to Serve Supplemental Jury Questionnaires on Prospective Jurors. Plaintiff argues that there are facts and allegations in this case that touch on sensitive issues of race, religion, and family. As a result of the potentially sensitive and controversial nature of these subjects, Plaintiff argues that these issues may provoke biases or stereotypes, which potential jurors might be hesitant to discuss during voir dire due to shame, anxiety, fear, or embarrassment. Plaintiff suggests that a supplemental jury questionnaire will be helpful in expediting the formation of a fair and impartial jury. Defendant argues that asking the proposed questions outside of open court will limit the Defendant’s ability to observe the responses of potential jurors’, thereby denying them the opportunity to evaluate non-verbal clues that may be suggestive of a jurors’ true beliefs. Further, Defendant argues that because the answers will not provide a basis for removing jurors for cause, they serve no purpose and will only serve to duplicate the efforts of the Court.

The Court does not find the Defendant’s arguments compelling. First, both Plaintiff and

Defendant will have copies of the potential jurors' supplemental questions and will be able to ask questions of the entire panel based on the responses. Second, Plaintiff is not arguing that these supplemental questionnaires will be used in place of in-person voir dire. The questionnaire will simply serve to aid the Court and the parties during voir dire. Third, in response to Defendant's concerns that answers to these questionnaires will not serve as the basis for removing jurors for cause, the Court notes that neither religious beliefs or practices nor racial or ethnic characteristics should play a role in whether a juror has the qualifications required of jury service. *See, e.g., Edmonson v. Leesville Concrete Co.*, 500 U.S. 614 (1991); *Hernandez v. New York*, 500 U.S. 352 (1991); *Powers v. Ohio*, 499 U.S. 400 (1991); *Batson v. Kentucky*, 476 U.S. 79 (1986). Nor should race or religion be unnecessarily introduced into cases. A party should be able, however, to inquire as to whether a potential juror holds beliefs or views that would preclude him or her from being a fair and impartial juror in this case.

In order to aid the Court and the parties in selecting a fair and impartial jury, the Court strikes Questions 33, 34, 37, 38, 39, 40, 44, 43 (second instance), 44 (second instance), and 45. To more appropriately address these issues, the Court will add the following questions to the questionnaire:

- Do you think Muslims experience racial profiling at airports?
What do you think about this?
- Different religions have different views about Muslims. If you practice a religion, what does your religion teach concerning Muslims?
How do you feel about that teaching?
- How would you feel if a family member or close friend married someone of a different religion or race?
- Have you read, seen, or heard anyone say that Muslims want to take over the United States and impose their laws on us? What did you think?

- Do you feel that you, a family member, or close friend have ever been discriminated against because of race or religion?
If you answered yes, please briefly describe the incident(s) of discrimination:
- Have you, a family member, or close friend every been accused of racial or religious discrimination or of racism?
If you answered yes, please briefly describe the incident(s) of discrimination:
- Have you, a family member, or close friend ever made a written complaint about any form of discrimination?
If you answered yes, please briefly describe the discrimination alleged in your complaint:
- Have you, a family member, or close friend ever had to prove that you (or the other persons) are not (or is not) racist?
If you answered yes, please briefly describe the discrimination alleged in the complaint(s) and the resolution of the complaint(s):

This Court maintains an active trial docket. In its experience, it has found that there are certain cases in which supplemental jury questionnaires can serve as a valuable aid in forming a fair and impartial jury. The basis of the allegations in this case suggests that this is one such situation. This Court will make every effort to create an environment that enables prospective jurors to speak comfortably about their attitudes toward race, religion, and family; the questionnaire will aid in those efforts. Accordingly, Plaintiffs' motion is **GRANTED**. The Clerk of the Court is therefore instructed to submit the supplemental questionnaire to prospective jurors.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT COURT

Dated: January 3, 2011