

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIAClerk, U.S. District & Bankruptcy
Courts for the District of Columbia

IN RE: ELEVENTH EXTENSION OF
AUTHORIZATION FOR USE OF VIDEO
TELECONFERENCING AND
TELECONFERENCING FOR CERTAIN
CRIMINAL AND JUVENILE
DELINQUENCY PROCEEDINGS

Standing Order No. 22-64 (BAH)

Chief Judge Beryl A. Howell

ORDER

The Court has continued to monitor the circumstances in this district relating to the COVID-19 pandemic, as detailed in the following **FINDINGS**:

1. On March 13, 2020, the President of the United States declared a national emergency under the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, with respect to the Coronavirus Disease 2019 (“COVID-19”) global pandemic, which national emergency remains in effect.¹ The Secretary of Health and Human Services has determined that a national public health emergency continues to exist.²
2. On March 29, 2020, the Judicial Conference of the United States found “that emergency conditions due to the national emergency declared by the President” with respect to COVID-19 “have materially affected and will materially affect the functioning of the federal courts generally,” which finding remains in effect.³

¹ Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic, 87 Fed. Reg. 10289 (Feb. 23, 2022).

² *Renewal of Determination That A Public Health Emergency Exists*, DEPARTMENT OF HEALTH & HUMAN SERVICES (Oct. 13, 2022), [HTTPS://ASPR.HHS.GOV/LEGAL/PHE/PAGES/COVID19-13OCT2022.ASPX](https://aspr.hhs.gov/legal/phe/pages/covid19-13oct2022.aspx)

³ Memorandum from James C. Duff, Director of the Administrative Office of the United States Courts, Update on CARES Act Provisions for Criminal Proceedings I (Mar. 29, 2020); *see also* Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Pub. L. No. 116-136, Sec. 6002, Div. B., Title VI, §§ 15002(b)(1)–(2), 134 Stat. 281, 528–29; Memorandum from Hon. Roslynn R. Mauskopf, Director of the Administrative Office of the

3. The United States District Court for the District of Columbia is a district court covered by the Judicial Conference finding, set out in paragraph 2, above.

4. On March 29, 2020, this Court authorized use of video teleconferencing, or teleconferencing if video conferencing is not reasonably available, for certain criminal proceedings pursuant to the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Pub. L. No. 116-136, § 6002, Div. B, Title V, § 15002(b)(3)(A), 134 Stat. 281, 529 (2020). *See In Re: Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings*, Standing Order No. 20-17 (BAH) (Mar. 29, 2020).

5. The CARES Act requires that authorization for use of video teleconferencing or telephone conferencing be reviewed “[o]n the date that is 90 days after the date on which [such] authorization . . . is issued,” and every 90 days thereafter. CARES Act, Sec. 6002, Div. B, Title VI, § 15002(b)(3). Following this Court’s initial authorization of March 29, 2020, multiple extensions have been authorized, the latest of which expires November 9, 2022.⁴

United States Courts, Continuation of National Emergency & Remote Proceedings under CARES Act 1 (Mar. 1, 2022).

⁴ *See In Re: First Extension of Authorization for Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings*, Standing Order No. 20-54 (BAH) (June 26, 2020); *In Re: Second Extension of Authorization for Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings*, Standing Order No. 20-75 (BAH) (Sept. 23, 2020); *In Re: Third Extension of Authorization for Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings*, Standing Order No. 20-92 (BAH) (Dec. 17, 2020); *In Re: Fourth Extension of Authorization for Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings*, Standing Order No. 21-14 (BAH) (Mar. 16, 2021); *In Re: Fifth Extension of Authorization for Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings*, Standing Order No. 21-33 (BAH) (June 11, 2021); *In Re: Updated Status of Court Operations, Including Jury Trials, and Extension of CARES Act Authorization for Remote Proceedings in Light of Current Circumstances Relating to the COVID-19 Pandemic*, Standing Order No. 21-47 (BAH) (Aug. 25, 2021); *In Re: Seventh Extension of Authorization for Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings*, Standing Order No. 21-70 (BAH) (Nov. 22, 2021); *In Re: Eighth Extension of Authorization for Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings*, Standing Order No. 22-07 (BAH) (Feb. 15, 2022); *In Re: Ninth Extension of Authorization for Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings*, Standing Order No. 22-27 (BAH) (May 12, 2022); *In Re: Further Extension of Authorization for Use of Video Teleconferencing and Teleconferencing Felony Pleas and Sentencings and Certain*

6. At the outset of the pandemic in March 2020, all jury trials were suspended in this Court and were authorized to resume only on a limited basis in March 2021.⁵ On December 30, 2021, jury trials were again suspended due to a surge of COVID-19 cases driven by the Omicron variant, and they resumed on February 7, 2022, as the surge began to subside.⁶ Since that time, jury trials have generally been conducted successfully with safety protocols in place, despite some instances of delays mid-trial arising from jurors or litigants getting COVID. This Court is forging ahead and continues to prioritize easing the backlog of criminal trials, with multiple trials scheduled to proceed over the next three months.

7. Currently, approximately 950 criminal cases are pending in this Court, including many arising out of the events at the United States Capitol on January 6, 2021. Many defendants charged in connection with those January 6, 2021 events reside outside of the District of Columbia, as do their counsel.

8. Extending the authority to utilize videoconferencing or teleconferencing for the ten proceedings listed in the CARES Act, § 15002(b)(1), allows the Court to prioritize the use of courtroom space for trials. It also helps reduce the risk of exposure and transmission of the virus that may arise from in-person proceedings. It also limits the need for travel by out-of-town defendants, families, attorneys, and interested members of the public and mitigates the health and safety risks posed to some by such travel to appear in person in the courthouse. It reduces the

Delinquency Proceedings, Standing Order No. 22-35 (BAH) (June 9, 2022); and *In Re Tenth Extension of Authorization for Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings*, Standing Order No. 22-45 (BAH) (Aug. 8, 2022).

⁵ *In Re: Court Operations in Exigent Circumstances Created by the COVID-19 Pandemic*, Standing Order 20-09 (BAH) (Mar. 16, 2020), ¶¶ (a)–(f) (suspension of jury trials); *In Re: Limited Resumption of Criminal Jury Trials in Light of Current Circumstances Relating to the COVID-19 Pandemic*, Standing Order 21-10 (BAH) (Mar. 5, 2021) (resumption of jury trials).

⁶ *In Re: Postponement of Jury Trials and Closing of Public Access to Clerk's Office in Light of Current Circumstances Relating to the COVID-19 Pandemic*, Standing Order No. 21-83 (BAH) (Dec. 30, 2021); *In Re: Further Postponement of Jury Trials and Closing of Public Access to Clerk's Office Due to Circumstances Relating to the COVID-19 Pandemic*, Standing Order No. 22-04 (BAH) (Jan. 20, 2022).

numbers of people in the courthouse generally and ensures that certain proceedings may continue on schedule even if a participant, or judge, is required to be in quarantine, is ill, or is otherwise impacted by the pandemic and unable to appear in person.

9. The Federal Public Defender's Office and the United States Attorney's Office for the District of Columbia support further extension of videoconferencing authority under the CARES Act, § 15002(b)(1), subject to the required determinations and consent in individual cases as noted below.

Accordingly, it is hereby **ORDERED**:

(a) Video Conferencing Authorization for Certain Criminal Proceedings.

Pursuant to the CARES Act, § 15002(b)(1), authorization for use of video teleconferencing (or telephone conferencing if video conferencing is not reasonably available), is **continued for 90 days until February 7, 2023**, or the earliest of the circumstances set forth, *infra*, in paragraph **(b)(ii)**, subject to the consent of the defendant after consultation with counsel, *see* CARES Act, § 15002(b)(4), for the following criminal proceedings enumerated in the CARES Act, § 15002(b)(1):

- i. Detention hearings under section 3142 of title 18, United States Code;
- ii. Initial appearances under Rule 5 of the Federal Rules of Criminal Procedure;
- iii. Preliminary hearings under Rule 5.1 of the Federal Rules of Criminal Procedure;
- iv. Waivers of indictment under Rule 7(b) of the Federal Rules of Criminal Procedure;
- v. Arraignments under Rule 10 of the Federal Rules of Criminal Procedure;
- vi. Probation and supervised release revocation proceedings under Rule 32.1 of the Federal Rules of Criminal Procedure;

- vii. Pretrial release revocation proceedings under section 3148 of title 18, United States Code;
- viii. Appearances under Rule 40 of the Federal Rules of Criminal Procedure;
- ix. Misdemeanor pleas and sentencings as described in Rule 43(b)(2) of the Federal Rules of Criminal Procedure; and
- x. Proceedings under Chapter 403 of title 18, United States Code, except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings.

(b) Expiration of Authorizations

(i) Pursuant to the CARES Act, § 15002(b)(2), this Court had previously authorized the use of video teleconferencing (or telephone conferencing if video conferencing is not reasonably available) through November 9, 2022 for felony pleas and sentencings, under Rules 11 and 32, respectively, of the Federal Rules of Criminal Procedure. See *In Re Tenth Extension of Authorization for Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings*, Standing Order No. 22-45 (BAH) (Aug. 8, 2022). This authorization expires on November 9, 2022.

(ii) The authorization for video and teleconferencing set forth, *supra*, in paragraph (a) shall remain in effect until the date indicated or the earliest of the following:

- A. Thirty days after the date on which the President's national emergency declaration terminates;
- B. The date on which the Judicial Conference of the United States finds that emergency conditions due to the national emergency declared by the President no longer materially affect the functioning of either the Federal courts generally or this Court in particular; or

C. This Court determines that authorization is no longer warranted.

The Court shall review the authorizations for use of video teleconferencing or telephone conferencing on or before the date indicated in paragraph (a) to determine whether such authorization is still warranted and whether any extension is necessary.

(d) **Further Orders.** Further orders addressing court operations and proceedings in the exigent circumstances caused by the COVID-19 pandemic will be issued as circumstances warrant.

SO ORDERED.

Date: November 9, 2022



BERYL A. HOWELL
Chief Judge