

**FILED**

**DEC 17 2020**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia**

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)

Chief Judge Beryl A. Howell

**ORDER**

A third extension of the Court's Standing Order 20-17, *In Re: Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings*, Standing Order No. 20-17 (BAH) (March 29, 2020), is warranted and authorized by the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, 134 Stat. 281, Div. B, Title V, § 15002(b)(3)(A). The CARES Act requires that authorization for use of video teleconferencing or telephone conferencing be reviewed "on the date that is 90 days after the date on which [such] authorization . . . is issued," and every 90 days thereafter. CARES Act, Div. B, Title V § 15002(b)(3)(A)–(B). This Court's initial authorization was issued March 29, 2020, and two 90-day extensions were issued subsequently, on June 26, 2020 and September 23, 2020.<sup>1</sup> A third 90-day extension is now authorized based on the

**FINDINGS** set out below:

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<sup>1</sup> 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).

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,<sup>2</sup> which national emergency remains in effect;

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,”<sup>3</sup> which finding remains in effect;

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. The Centers for Disease Control and Prevention (“CDC”) and other public health authorities continue to advise taking precautions to reduce the possibility of exposure to COVID-19 during this global pandemic in order to slow the spread of the disease and, because “[t]he virus is . . . spread mainly from person-to-person . . . [b]etween people who are in close contact with one another,”<sup>4</sup> the CDC further advises that individuals should engage in “social distancing” by maintaining a distance of at least “6 feet . . . from others when possible”<sup>5</sup>;

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<sup>2</sup> *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, OFFICE OF THE PRESIDENT OF THE UNITED STATES, <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (last visited Dec. 16, 2020).

<sup>3</sup> Memorandum, dated March 29, 2020, from Jim Duff, Director of the Administrative Office of the Courts, Re: Update on CARES Act Provisions for Criminal Proceedings at 1; *see also* CARES Act, Div. B, Title V, §§ 15002(b)(1)–(2).

<sup>4</sup> *How COVID-19 Spreads*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html> (last visited Dec. 16, 2020).

<sup>5</sup> *Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19), May 2020*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html> (last visited Dec. 16, 2020).

5. Since June 22, 2020, the District of Columbia has operated in the second phase of its COVID-19 recovery and reopening plan. Under the District of Columbia's Phase Two restrictions and guidance, the general public is advised to continue to maintain social distancing of 6 feet and to wear masks when in the presence of individuals outside their own household. Mass gatherings are prohibited, and non-essential businesses may operate only at a limited capacity.<sup>6</sup> The District of Columbia continues to strongly encourage telework for non-essential, non-retail businesses,<sup>7</sup> and the vast majority of students in D.C. public schools are continuing with distance learning from home.<sup>8</sup> On October 7, 2020, the Mayor of the District of Columbia further extended the public emergency and public health emergency declarations for the District through December 31, 2020.<sup>9</sup>

6. Over the nearly six months since the District of Columbia entered Phase Two on June 22, 2020, COVID-19 case counts in D.C. have fluctuated. In recent weeks, case numbers have been surging upward, and they now are at significantly higher levels than in June. On June 22, 2020, the 7-day average of new cases was 37; on September 20, 2020 it was 52; and on December 15, 2020, the 7-day average of new cases was 250.<sup>10</sup> Over the last two weeks in the District, the

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<sup>6</sup> Mayor's Order 2020-075, *Phase Two of Washington, DC Reopening* (June 19, 2020), [https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page\\_content/attachments/Mayors-Order-2020-075-06-19-20.pdf](https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/Mayors-Order-2020-075-06-19-20.pdf).

<sup>7</sup> *Phase Two Guidance Coronavirus 2019 (COVID-19): Guidance for Office Buildings*, DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH, [https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/publication/attachments/COVID-19\\_DC\\_Health\\_Guidance\\_for\\_Office\\_Buildings\\_2020.07.29\\_FINAL.pdf](https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/publication/attachments/COVID-19_DC_Health_Guidance_for_Office_Buildings_2020.07.29_FINAL.pdf) (last visited Dec. 16, 2020).

<sup>8</sup> *DCPS to #ReopenStrong Virtually this Fall*, DISTRICT OF COLUMBIA PUBLIC SCHOOLS, <https://dcpsreopenstrong.com/updates/dcps-to-reopenstrong-virtually-this-fall/> (last visited Dec. 16, 2020).

<sup>9</sup> Mayor's Order 2020-103, *Extensions of Public Emergency and Public Health Emergency and Additional Measures in Phase Two of Washington, DC Reopening* (Oct. 7, 2020), [https://mayor.dc.gov/sites/default/files/dc/sites/mayoromb/release\\_content/attachments/Mayor%27s%20Order%2020-103.pdf](https://mayor.dc.gov/sites/default/files/dc/sites/mayoromb/release_content/attachments/Mayor%27s%20Order%2020-103.pdf).

<sup>10</sup> *Washington, D.C. Coronavirus Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/washington-dc-coronavirus-cases.html> (last visited Dec. 16, 2020); see also *COVID-19 Surveillance*, OFFICE OF THE MAYOR OF THE DISTRICT OF COLUMBIA, <https://coronavirus.dc.gov/data> (last visited Dec. 16, 2020).

number of new cases has increased by 37% and the number of deaths by 58%.<sup>11</sup> The recent surge of cases has prompted the Mayor of the District of Columbia to further tighten community restrictions on November 23, 2020, explaining in Mayor's Order 2020-119 issued the same day:

Community transmission of COVID-19 is escalating throughout the District and is exploding in many parts of the country. Reinforcement to encourage community responsibility and compliance with health and safety rules is necessary. Flu season, holiday gatherings, and greater indoor activity during winter are anticipated to cause even more cases of COVID-19 and increased stress on our hospital system's capacity. Immediate further action on the part of our residents, employers, and visitors, and further restrictions on activities that are conducive to the rapid spread of the disease are warranted.<sup>12</sup>

Pursuant to the Mayor's order, the allowable limit for outdoor gatherings was reduced from 50 to 25 people, and the allowable size of most indoor gatherings was reduced from 25 people to 10.<sup>13</sup> The maximum indoor capacity of restaurants was reduced from 50% to 25%.<sup>14</sup> Indoor gyms and recreation centers have been ordered to suspend many activities.<sup>15</sup>

7. Other jurisdictions within the D.C. metropolitan area also have increased restrictions to combat the recent surge in COVID-19 cases. The State of Maryland, which had moved to its third stage of recovery and loosened some community restrictions on September 1, 2020,<sup>16</sup> reversed course on November 17, 2020, returning restrictions to phase two levels.<sup>17</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> Mayor's Order 2020-119, *Modified Requirements to Combat Escalation of COVID-19 Pandemic During Phase Two* (Nov. 23, 2020), [https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page\\_content/attachments/Mayor%27s%20Order%202020-119%20%2011-23-2020.pdf](https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/Mayor%27s%20Order%202020-119%20%2011-23-2020.pdf).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*; see also Mayor's Order 2020-075, *supra* note 6.

<sup>16</sup> *Governor Hogan Announces Beginning of Stage Three of Maryland's COVID-19 Recovery, Additional Safe and Gradual Reopenings*, OFFICE OF THE GOVERNOR OF MARYLAND, <https://governor.maryland.gov/2020/09/01/governor-hogan-announces-beginning-of-stage-three-of-marylands-covid-19-recovery-additional-safe-and-gradual-reopenings/> (last visited Dec. 16, 2020).

<sup>17</sup> See, e.g., *To Fight COVID-19 Surge, Governor Hogan Announces Hospital Surge Measures, Statewide Capacity Restrictions*, OFFICE OF THE GOVERNOR OF MARYLAND, <https://governor.maryland.gov/2020/11/17/to-fight-covid-19-surge-governor-hogan-announces-hospital-surge-measures-statewide-capacity-restrictions/> (last visited Dec. 16, 2020) (reducing indoor dining and retail capacity, restricting hospital and nursing home visitation, and discouraging elective medical procedures).

On December 10, 2020, the Governor of Virginia announced new restrictions for that state, including a modified stay-at-home order, a universal mask requirement, and a reduction in the size of allowable social gatherings from 25 to 10.<sup>18</sup>

8. In the first several months of the pandemic, a number of individuals detained in the D.C. Department of Corrections' ("DOC") D.C. Jail tested positive for COVID-19, resulting in the isolation of those individuals and quarantine of other individuals detained at the D.C. Jail on charges pending in the U.S. District Court for the District of Columbia or in other local and federal courts in this metropolitan area.<sup>19</sup> The cases and transmission of the virus within the D.C. Jail has been well contained in recent months, but DOC officials remain vigilant about the risks of transmission and further exposure from residents entering or re-entering the facility. Thus, the DOC and the United States Marshals Service have advised that limiting the number of in-person court proceedings, in compliance with strict safety protocols, is important for maintaining the health and safety of DOC residents.

9. This Court transitioned to Phase Two of its Continuity of Operations Plan for the COVID-19 Pandemic ("COOP Plan") on September 14, 2020.<sup>20</sup> Pursuant to the COOP Plan, during Phase Two, limited in-court proceedings are permitted when the presiding Judge determines, upon request of a party, that an in-person appearance is "necessary." *See* COOP

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<sup>18</sup> *Governor Northam Announces New Mitigation Measures to Slow COVID-19 Spread*, VIRGINIA GOVERNOR (Dec. 10, 2020), <https://www.governor.virginia.gov/newsroom/all-releases/2020/december/headline-886185-en.html>.

<sup>19</sup> *Public Safety Agency COVID-19 Case Data*, GOVERNMENT OF THE DISTRICT OF COLUMBIA, <https://coronavirus.dc.gov/page/public-safety-agency-covid-19-case-data> (compiling statistics on the prevalence of COVID-19 within the D.C. Department of Corrections) (last visited Dec. 16, 2020).

<sup>20</sup> *See* U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, *Continuity of Operations Plan during the COVID-19 Pandemic (with appendices)*, July 15, 2020, <https://www.dcd.uscourts.gov/sites/dcd/files/Continuity%20of%20Operations%20Plan%20with%20Appendix%20for%20External.pdf>. The Court's COOP Plan and updated appendices are available at *Coronavirus (COVID-19) Response—Information and Announcements*, UNITED STATES DISTRICT COURT: DISTRICT OF COLUMBIA, <https://www.dcd.uscourts.gov/coronavirus-covid-19-response-information-and-announcements> (last visited Dec. 16, 2020).

Plan at 15, ¶ 4; *id.*, Appendix 7 ¶ 1. The number of individuals present in the courtroom for any in-court proceeding must be kept to the minimum necessary with permission required from the presiding Judge for any non-participant in the proceeding to be physically present. COOP Plan, Appendix 7 ¶ 5(d). For public health and safety reasons, the expectation is that most proceedings will be conducted remotely, via video or teleconference. *Id.* ¶ 1. Significant precautions are taken for all in-person proceedings. *See id.* ¶¶ 3–9.

10. All jury trials have been suspended in this District until March 15, 2021, and naturalization ceremonies have been again suspended and postponed.<sup>21</sup>

11. Public health guidance continues to emphasize and recommend the maintenance of physical distancing of at least 6 feet, the wearing of masks and additional precautions, including encouraging telework and heightened precautions to protect vulnerable individuals, which may include a presiding Judge, a defendant, defense counsel of defendant's choice or other court participants.<sup>22</sup>

12. Although multiple COVID-19 vaccines are in development, public health officials have advised that initially insufficient doses will be available for all adults, though supplies will increase over time.<sup>23</sup> On December 11, 2020, the United States Food and Drug Administration issued an Emergency Use Authorization for a COVID-19 vaccine developed by Pfizer-BioNTech.<sup>24</sup> Distribution of that vaccine has just begun. Pursuant to the District

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<sup>21</sup> See *In Re: Sixth Extension of Postponed Jury Trials Due to Ongoing Exigent Circumstances Caused by COVID-19 Pandemic*, Standing Order No. 20-93 (BAH) (Dec. 17, 2020); *In Re: Adjustment to Fifth Extension of Postponed Jury Trials Due to Ongoing Exigent Circumstances Caused by COVID-19 Pandemic and Temporary Suspension of Authority to Administer the Oath of Allegiance to New Citizens*, Standing Order No. 20-91 (BAH) (Nov. 24, 2020).

<sup>22</sup> See *Opening Up America Again*, OFFICE OF THE PRESIDENT OF THE UNITED STATES, <https://www.whitehouse.gov/openingamerica/> (describing phase two guidelines) (last visited Dec. 16, 2020).

<sup>23</sup> *Frequently Asked Questions About COVID-19 Vaccination*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Dec. 13, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/faq.html>.

<sup>24</sup> *How CDC Is Making COVID-19 Vaccine Recommendations*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Dec. 13, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations-process.html>.

of Columbia's vaccination plan, the vaccination of D.C. residents and workforce will be conducted in phases, with vaccination of the highest priority persons in Phase 1-A beginning this week.<sup>25</sup> In Phase 1-B, other people who hold key roles in the essential functioning of society will be vaccinated, including law enforcement personnel, grocery workers, school teachers and staff, and people at increased risk or advanced age.<sup>26</sup> The District of Columbia estimates the number of eligible people in Phase 1-A to be 85,000 and in Phase 1-B to be 310,000.<sup>27</sup> The speed with which the District is able to vaccinate these priority categories first and then others is dependent upon vaccine allotments received. The first vaccine allotment for D.C. was 6,825 doses and is being administered to frontline health care workers and first responders in Phase 1-A.<sup>28</sup> The size of subsequent allotments is unclear, and experts have predicted that vaccination against COVID-19 may not be widely available to persons in other phases of the vaccination plan or to the general public until later in 2021.<sup>29</sup>

13. In-court proceedings for felony pleas under Rule 11 of the Federal Rules of Criminal Procedure and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure require close contact between criminal defendants and their counsel, government counsel, court staff, Deputy United States Marshals, Court Security Officers, and Judges, and may require the transport of detained individuals from various jail facilities to the courthouse within a confined vehicle space. Accordingly, many felony pleas under Rule 11 and felony sentencings under

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<sup>25</sup> See DISTRICT OF COLUMBIA, COVID-19 VACCINATION PLAN 24 (Nov. 27, 2020), [https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page\\_content/attachments/DC\\_COVID-19%20Vaccination%20Plan%2011.27.pdf](https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/DC_COVID-19%20Vaccination%20Plan%2011.27.pdf).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 25.

<sup>28</sup> DISTRICT OF COLUMBIA HEALTH, CORONAVIRUS (COVID-19) SITUATIONAL UPDATE 8 (Dec. 14, 2020), [https://mayor.dc.gov/sites/default/files/dc/sites/coronavirus/page\\_content/attachments/Situational-Update-Presentation-12-14-20.pdf](https://mayor.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/Situational-Update-Presentation-12-14-20.pdf).

<sup>29</sup> *Frequently Asked Questions About COVID-19 Vaccination*, *supra* note 23.

Rule 32 cannot be conducted in person in this District without seriously jeopardizing the public health and safety of in-court participants and others with whom they may have contact.

It is therefore

**ORDERED**, based upon this Court's review of the current circumstances in this District, that the authorization for use of video teleconferencing or telephone conferencing under Standing Order No. 20-17 shall remain in effect until 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 such authorization is no longer warranted; and it is further

**ORDERED** that this Court shall review the authorization for use of video teleconferencing or telephone conferencing every 90 days to determine whether this authorization is still warranted or whether extension of the authorization is necessary.

**SO ORDERED.**

Date: December 17, 2020



*Beryl A. Howell*

BERYL A. HOWELL  
Chief Judge