

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA

IN THE MATTER OF)
) STANDING ORDER 23-01
VIDEO CONFERENCE HEARINGS)
IN CASES DUE TO COVID-19 SPREAD)

WHEREAS Amended Standing Order 22-04, which authorized certain video hearings under the CARES Act lapsed on December 29, 2022; and

WHEREAS the Court continues to evaluate how best to protect public safety and health during the COVID-19 outbreak while effectively administering justice during this period of national emergency; and

WHEREAS Congress has passed, and the President has signed legislation authorizing the use of video and telephone conferencing, under certain circumstances and with the consent of the defendant, for various criminal case hearings during the COVID-19 outbreak; and

WHEREAS the Judicial Conference of the United States has found under that legislation, the Coronavirus Aid, Relief, and Economic Security Act, H.R. 748 (CARES Act), that emergency conditions due to the national emergency declared by the President will materially affect the functioning of the Federal courts generally.

NOW THEREFORE, the Court hereby adopts the following Standing Order:

1. The Court recognizes that flexibility in how best to conduct criminal hearings serves community safety and the interests of justice in the District of South Dakota, with the COVID-19 virus still spreading in South Dakota and with certain jails where federal detainees are held at times not allowing inmates removed for in-person hearings to return to those jails.

2. The Court reauthorizes on its own motion the use of video teleconferencing (or telephone conferencing if video teleconferencing is not reasonably available) in the criminal procedures specifically enumerated in Section 15002(b)(1) of the CARES Act, to wit:

- a. Detention hearings under Section 3142 of Title 18, United States Code;
- b. Initial appearances under Rule 5 of the Federal Rules of Criminal Procedure;
- c. Preliminary hearings under Rule 5.1 of the Federal Rules of Criminal Procedure;
- d. Waivers of indictment under Rule 7(b) of the Federal Rules of Criminal Procedure;


- e. Arraignments under Rule 10 of the Federal Rules of Criminal Procedure;
- f. Probation and supervised release revocation proceedings under Rule 32.1 of the Federal Rules of Criminal Procedure;
- g. Pretrial release revocation proceedings under Section 3148 of Title 18, United States Code;
- h. Appearances under Rule 40 of the Federal Rules of Criminal Procedure;
- i. Misdemeanor pleas and sentencings as described in Rule 43(b)(2) of the Federal Rules of Criminal Procedure; and
- j. Proceedings under Chapter 403 of Title 18, United States Code (commonly known as the "Federal Juvenile Delinquency Act"), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings.

3. The Court finds on its own motion, under Section 15002(b)(2) of the CARES Act, that 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 cannot be conducted in person in certain cases presently without seriously jeopardizing public health and safety. Thus, the use of video conferencing (or telephone conferencing if video conferencing is not reasonably available) is permitted for change of plea and sentencing hearings in felony cases with the defendant's consent in such cases.

4. Under Section 15002(b)(2)(A) of the CARES Act, any judge presiding in a particular case who authorizes the use of video conferencing (or telephone conferencing if video conferencing is not reasonably available) under paragraph 3 of this Standing Order must find for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice. Under Section 15002(b)(4) of the CARES Act, this authorization may occur only with the consent of the defendant, or the juvenile, after consultation with counsel.

5. The Court under Sections 15002(b)(3)(A) and (B) of the CARES Act renews the authorization for certain hearings by video through May 1, 2023. The Court will review the findings and authorizations made in this Renewed Standing Order no later than ninety (90) days after entry or any subsequent renewal.

Dated this 1st day of February 2023.


ROBERTO A. LANGE, CHIEF JUDGE
UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA