

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

IN THE MATTER OF SCHEDULING  
JURY TRIALS

STANDING ORDER  
21-03

On March 17, 2020, Chief Judge Roberto A. Lange entered Standing Order 20-03, cancelling jury trials and grand jury proceedings through April 24, 2020, due to the outbreak of the respiratory disease COVID-19 in South Dakota and the bordering states. The COVID-19 virus continued to spread in the United States and within the State of South Dakota.

On April 8, 2020, because of the increasing spread of COVID-19 and after considering guidance from the Centers for Disease Control and consulting with representatives of numerous agencies, Chief Judge Lange entered a First Amended Standing Order 20-03 which extended cancellation of jury trials and grand jury proceedings through July 6, 2020.

Since July 6, 2020, some divisions of the District of South Dakota have experienced a decline in the spread of COVID-19 and have successfully conducted jury trials and allowed grand juries to convene. In the Western Division, COVID-19 positive test numbers are increasing substantially making it difficult to predict when jury trials may be safely conducted.

By a Third Amended Standing Order 20-03 issued on July 22, 2020, Chief Judge Lange left it to each judge in each division to determine whether COVID-19 continued to be a significant health issue in that judge's division. By the standing order, each district judge was authorized to determine whether there was an inability to safely call and retain an adequate cross-section of jurors in order to conduct criminal jury trials. Each judge was authorized to make findings as to whether the interests of justice were best served by continuing criminal jury trials and whether that decision outweighed the interest of the public and any defendant's right to a speedy trial. When the court made those findings, it excluded the resulting periods of delay under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A).

On January 7, 2021, Chief Judge Lange entered Standing Order 21-01. The order permits the resumption of jury trials on January 25, 2021. The order also provides that the presiding judge in a particular division can

determine that there is an inability to safely call and retain an adequate cross-section of jurors for trial.

Presently, the COVID testing in Pennington County confirms a 32 percent positivity rate. Other counties in Western Division also are experiencing significant community spread and deaths from the COVID virus. The court further finds the existing public health emergency and the need to follow guidance from the Centers for Disease Control continues to create an inability to safely call jurors for criminal jury trials. Accordingly, it is

ORDERED that the ends of justice are best served by the court continuing jury trials scheduled prior to March 8, 2021. Continuing trial dates based on the court's findings outweigh the interest of the public and any defendant's right to a speedy trial. The parties in any pending criminal case are encouraged to consent to trial by the court without a jury. See Federal Rule of Criminal Procedure 23(a).

IT IS FURTHER ORDERED that pursuant to the Standing Order 21-01 and this Standing Order, and until further order of the court, the periods of delay resulting from continuances are excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A) for the period commencing January 25, 2021 to March 8, 2021.

Dated January 22, 2021.

BY THE COURT:

  
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JEFFREY L. VIKEN  
UNITED STATES DISTRICT JUDGE