

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

IN RE: CRIMINAL PROCEEDINGS)
BY VIDEO OR AUDIO) CIV. MISC. NO. 2:20-mc-3910-ECM
CONFERENCE)

GENERAL ORDER

On March 13, 2020, the President of the United States declared a national emergency in response to the Coronavirus Disease 2019 (“COVID-19”) pandemic.¹ On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act, H.R. 748 (the CARES Act), which authorizes the Judicial Conference of the United States to provide the Chief Judge of a United States District Court authority to permit the conduct of certain identified criminal proceedings by video or audio conference.

On March 29, 2020, the Judicial Conference of the United States made the appropriate findings as required by the CARES Act, finding specifically that “emergency conditions due to the national emergency declared by the President . . . have materially affected and will materially affect the functioning of the federal courts generally.” The CARES Act authorizes this Court, on its own motion, or upon application of the Attorney General of the United States or his designee, to authorize the use of video teleconferencing, or audio teleconferencing if video teleconferencing is not reasonably available, for the following criminal case events:

- A. Detention hearings under 18 U.S.C. § 3142;
- B. Initial appearances under Rule 5, Federal Rules of Criminal Procedure;

¹ On February 23, 2022, the President’s February 18, 2022, notice to Congress that COVID-19 continues to cause significant risk to public health and safety was published in the Federal Register, and continues in effect the national emergency declared on March 13, 2020 beyond March 1, 2022.

- C. Preliminary hearings under Rule 5.1, Federal Rules of Criminal Procedure;
- D. Waivers of indictment under Rule 7(b), Federal Rules of Criminal Procedure;
- E. Arraignments under Rule 10, Federal Rules of Criminal Procedure;
- F. Probation and supervised release revocation hearings under Rule 32.1, Federal Rules of Criminal Procedure;
- G. Pretrial release revocation hearings under 18 U.S.C. § 3148;
- H. Appearances under Rule 40, Federal Rules of Criminal Procedure;
- I. Misdemeanor pleas and sentencings as described in Rule 43(b)(2), Federal Rules of Criminal Procedure; and
- J. Proceedings under 18 U.S.C. §§ 5031–5043, except for contested transfer hearings, juvenile delinquency adjudications, or trial proceedings.

The CARES Act conditions the authorization of the use of video teleconferencing, or audio teleconferencing if video teleconferencing is not reasonably available, for these events upon the consent of the Defendant.

The CARES Act further authorizes this Court, on its own motion, or upon application of the Attorney General of the United States or his designee, to authorize the use of video teleconferencing, or audio teleconferencing if video teleconferencing is not reasonably available, to conduct felony plea proceedings under Rule 11 of the Federal Rules of Criminal Procedure and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure. The CARES Act conditions this authorization, however, upon this Court specifically finding that these particular proceedings cannot be conducted in person without seriously jeopardizing public health and safety. The CARES Act also conditions this authorization upon the district judge in each particular case finding, for specific reasons, that the plea or sentencing in that

case cannot be further delayed without serious harm to the interests of justice. Finally, the CARES Act requires the consent of the Defendant.

On March 30, 2020, this Court entered a General Order in re: Criminal Proceedings by Video or Audio Conference, 2:20-mc-3910 (doc. 4), making the appropriate findings and authorizing the use of video teleconferencing, or audio teleconferencing if video teleconferencing is not reasonably available, to conduct all of the criminal case events described in the foregoing paragraphs with the consent of the Defendant. That Order further found that felony plea proceedings under Rule 11 of the Federal Rules of Criminal Procedure and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure could not be conducted in person, in this district, without seriously jeopardizing public health and safety. As such, the Order provided that in the event the district judge in a particular case finds for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice, and the Defendant consents, that proceeding could be conducted by the use of video teleconferencing, or audio teleconferencing if video teleconferencing is not reasonably available. That authority was further extended to similar hearings under the Federal Juvenile Delinquency Act, 18 U.S.C. § 403.

The above-referenced Order was to terminate unless extended by further Order of this Court: (1) ninety (90) days from its entry; (2) on the last day of the national emergency that was declared by the President on March 13, 2020; or (3) the day on which the Judicial Conference of the United States determines that the emergency no longer materially affects the United States courts or this district, whichever occurred first.

The national emergency declaration by the President on March 13, 2020, continues in effect; the Judicial Conference of the United States has not determined that the emergency no longer materially affects the United States courts or this district; this order was extended on June 23, 2020 (doc. 8), September 18, 2020 (doc. 9), December 14, 2020 (doc. 10), March 12, 2021 (doc. 11), June 9, 2021 (doc. 15), September 7, 2021 (doc. 18), December 7, 2021 (doc. 20), March 4, 2022 (doc. 22), June 1, 2022 (doc. 24), August 30, 2022 (doc. 25), and November 28, 2022 (doc. 26); and COVID-19 persists. For the reasons as stated, this Court finds that General Order in re: Criminal Proceedings by Video or Audio Conference, 2:20-mc-3910 (doc. 4) should be extended until May 11, 2023. Accordingly, it is

ORDERED that General Order in re: Criminal Proceedings by Video or Audio Conference, 2:20-mc-3910 (doc. 4) is extended **until May 11, 2023** and will then terminate unless otherwise extended by further Order. In addition, the Order will terminate automatically either on the last day of the national emergency that was declared by the President on March 13, 2020 or the day on which the Judicial Conference of the United States determines that the emergency no longer materially affects the United States courts or this district, whichever occurs first.

To the extent inconsistent with this Order, any order in this district is hereby **SUPERSEDED**.

DONE this the 27th day of February, 2023.

/s/ Emily C. Marks
EMILY C. MARKS
CHIEF UNITED STATES DISTRICT JUDGE