

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In the matter of )  
 )  
CRIMINAL CASE PROCEEDINGS )  
DURING THE COVID-19 PUBLIC )  
EMERGENCY )  
\_\_\_\_\_ )

Order of the  
Chief Judge No. 63

On January 25, 2021, Chief Judge Order (CJO) 56 was issued and provided for the use of video teleconferencing, or telephone conferencing if video conferencing is not reasonably available, for certain criminal proceedings pursuant to the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). CJO 56 is in effect until March 8, 2021.

On February 2, 2021, CJO 60 was issued and provided that this Court’s previously imposed moratorium on conducting in-person court proceedings was reinstated until March 8, 2021. Except for convening jury trials, individual district judges retained discretion, on a case by case basis, to schedule in-person criminal and civil proceedings, including bench trials, and otherwise take such actions as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties. In doing so, judges were to consider in each individual case whether convening an in-person hearing posed a serious threat to health and safety.

The Coronavirus Disease 2019 (“COVID-19”) outbreak is still considered to be a national emergency under the National Emergencies Act, 50 U.S.C. § 1601, *et seq.* The finding made by the Judicial Conference of the United States that “emergency conditions due to the national emergency declared by the President with respect to COVID-19 will materially affect the functioning of the federal courts generally” remains. Therefore, pursuant to § 15002(b)(1) of the CARES Act, the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, is authorized for the following proceedings:

- (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.

Video teleconferencing or telephone conferencing as authorized by this Order may only take place with the consent of the defendant, or the juvenile, after consultation with counsel. This consent may be obtained on the record at the time of the relevant event and need not be in writing.

Individual district judges retain discretion, on a case by case basis, to schedule in-person criminal proceedings, and otherwise take such actions as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties. In doing so, judges must consider in each individual case whether convening an in-person hearing poses a serious threat to health and safety.

As of February 26, 2021, the County of San Diego reported a 3% positivity rate of COVID-19 cases. Therefore, the previous finding in CJO 56 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 without seriously jeopardizing public health and safety is withdrawn. CJO 31-B, which temporarily authorized the El Centro United States Courthouse to conduct felony plea and sentencing proceedings by video teleconferencing or telephone conferencing, will expire on March 8, 2021.

Beginning on March 8, 2021, felony plea and sentencing proceedings will be conducted in person. Hearings in these matters for in-custody defendants will be set on Mondays, Wednesdays, and Fridays on the calendar of the assigned District Judge. Felony plea proceedings for in-custody defendants will also be set on Mondays, Wednesdays, and Fridays on the calendar of the assigned Magistrate Judge. Magistrate Judges may schedule felony plea proceedings for defendants who are out of custody on any day of the week.

Attorneys who for health or other exceptional reasons are unable to appear in-person with their clients may file a motion with the Court prior to the plea or sentencing seeking leave to appear telephonically or by videoconference. An approved version of a standard form motion to appear remotely is available on the Court's website at [https://www.casd.uscourts.gov/\\_assets/pdf/forms/Motion%20to%20Appear%20VT%20\(Criminal\).pdf](https://www.casd.uscourts.gov/_assets/pdf/forms/Motion%20to%20Appear%20VT%20(Criminal).pdf).

Beginning on March 8, 2021, jury trials in criminal cases will also resume in person. The Court will follow the trial reopening plan as set forth in CJO 36 and CJO 36-A in order to maintain the Court's health and safety protocol due to the COVID-19 pandemic.

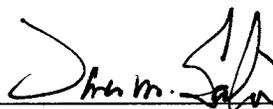
On its own motion, the Court finds that the period of suspension of criminal trials and other criminal proceedings due to the COVID-19 pandemic and related health and safety restrictions and requirements is excluded under the Speedy Trial Act. These restrictions and requirements include, but are not limited to, metered trials (i.e., only 3 trials per week), limited access to detainees, limited ability to safely transport detainees, and limited in-person proceedings. Under 18 U.S.C. § 3161(h)(7)(A), the Court finds that this temporary suspension of in-person proceedings serves the ends of justice and outweighs the interests of the public, of the government, and of criminal defendants in a speedy trial. The Court also relies on the previously issued Judicial Emergency Declaration under 18 U.S.C. § 3174. The period of exclusion will be in effect from the date of this Order until April 17,

2021, absent further order of the Court or that of any individual district judge. The Court may extend the period of exclusion as circumstances warrant. This Order does not toll any statutes of limitations or any statutory deadline for the filing of an appeal.

This Order will go into effect on March 8, 2021, when CJO-56 and CJO-60 expire, and remain in place until further order of the Court.

IT IS SO ORDERED.

Dated: 3-2-21



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DANA M. SABRAW  
Chief United States District Judge