

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

IN THE MATTER OF:

AUTHORIZATION OF VIDEO AND
TELEPHONE CONFERENCING PURSUANT
TO THE CORONAVIRUS AID, RELIEF, AND
ECONOMIC SECURITY ACT

GENERAL ORDER

To the extent this Order differs from previous orders of the Court on this subject, this Order supersedes and replaces those orders.

On March 30, 2020 the Court issued an order authorizing video and telephone conferencing in certain criminal proceedings pursuant to the Coronavirus Aid, Relief, and Economic Security Act, H.R. 748 (2020) (the "CARES Act"). As permitted under the Act, the Court issued orders on June 23, 2020 and September 17, 2020, extending that authorization for 90 days each time. Section 15002 of the Act provides for video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, for certain criminal proceedings if the Judicial Conference of the United States finds that emergency conditions due to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the Coronavirus Disease 2019 (COVID-19) will materially affect the functioning of either the federal courts generally or a particular district court of the United States, and the chief judge of a district court covered by that finding authorizes the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably

available for certain criminal proceedings.

On March 29, 2020, on the joint recommendation of the chairs of the Committee on Court Administration and Case Management and the Committee on Rules of Practice and Procedure, the Judicial Conference found that emergency conditions due to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. § 1601 et seq.) with respect to COVID-19 have materially affected and will materially affect the functioning of the federal courts generally.

In the March 30, 2020 order, as extended by the June 23, 2020 and September 17, 2020 orders, the Court authorized, on its own motion, the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, for the following criminal proceedings, as specified in Section 15002 of the CARES Act:

- Detention hearings under 18 U.S.C. § 3142;
- Initial appearances under Fed. R. Crim. P. 5;
- Preliminary hearings under Fed. R. Crim. P. 5.1;
- Waivers of Indictment under Fed. R. Crim. P. 7(b);
- Arraignments under Fed. R. Crim. P. 10;
- Probation and supervised release revocation proceedings under Fed. R. Crim. P. 32.1;
- Pretrial release revocation proceedings under 18 U.S.C. § 3148;
- Appearances under Fed. R. Crim. P. 40;
- Misdemeanor pleas and sentencings under Fed. R. Crim. P. 43(b)(2);
- Proceedings under chapter 403 of title 18 of the United States Code, 18 U.S.C. § 403 (commonly known as the “Federal Juvenile Delinquency Act”), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings.

The video teleconferencing or telephone conferencing as authorized above may only take place with the consent of the defendant, or the juvenile, after consulting with counsel.

Further, the Court specifically found on its own motion that felony pleas under

Fed. R. Crim. P. 11 and felony sentencings under Fed. R. Crim. P. 32 cannot be conducted in person without seriously jeopardizing public health and safety. In accordance with the CARES Act, the Court authorized these proceedings to be conducted by video teleconference, or by telephone conference if video teleconference is not reasonably available, if 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. The video teleconferencing or telephone conferencing of felony pleas under Fed. R. Crim. P. 11 and felony sentencings under Fed. R. Crim. P. 32 may only take place with the consent of the defendant, or the juvenile, after consulting with counsel.

The Court's March 30, 2020 order authorizing video teleconferencing or telephone conferencing provided that, unless the emergency authority has been terminated, the Order will be reviewed in 90 days to determine whether the teleconferencing authority should be extended. In its June 23, 2020 and September 17, 2020 orders, the Court performed the relevant review, extended the original authorization for 90 days, and directed that the extended authorization will be reviewed at least once every 90 days. As of the date of this Order, 90 days again approaches and review is warranted.

Since authorizing video teleconferencing and telephone conferencing for criminal proceedings pursuant to the CARES Act, the Court has developed procedures and designed Court spaces to enable some plea and sentencing proceedings to be held in person without seriously jeopardizing public health and safety. However, despite these efforts, the Court finds that not all plea and sentencing proceedings in this District can be held in person in a safe manner due to the particularized nature of the case and/or the

risk to the participants involved. Indeed, some detention facilities housing Southern District of Indiana criminal defendants are experiencing COVID-19 outbreaks at present and are not allowing transportation of defendants. Other facilities require defendants to enter quarantine for a period of up to 14 days upon returning from an in-person court proceeding. While in quarantine, a defendant may be restricted from participation in normal activities, including educational and rehabilitative programming. A defendant may also be at greater risk of exposure to the virus with other individuals in quarantine. For these reasons, the Court finds that the need remains to authorize conducting criminal proceedings, including plea and sentencing proceedings, by video teleconference or telephone conference where video teleconferencing is not reasonably available, as provided under the CARES Act.

Accordingly, upon review of the Court's March 30, 2020, June 23, 2020, and September 17, 2020 orders, the Court determines that the authorization to conduct proceedings via video conferencing or teleconferencing pursuant to the CARES Act should be extended for 90 days. This extended authorization shall be reviewed at least once every 90 days until it is determined the authorization is no longer warranted, or the emergency authority is terminated under paragraph (5) of the CARES Act, whichever occurs earlier.

For the Court,

December 16, 2020


Hon. Jane Magnus-Stinson, Chief Judge
United States District Court
Southern District of Indiana