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March 22, 2020

Honorable Raymond J. Lohier, Jr.
United States Court of Appeals
Thurgood Marshall
United States Courthouse
40 Centre Street, Room 730
New York, NY 10007

Dear Judge Lohier:

I write on behalf of the Federal Public and Community Defenders. Together with appointed counsel under the Criminal Justice Act, we represent the vast majority of defendants appearing in federal courts.

We are grateful for the Judiciary's efforts to ensure a safe and healthy environment in federal courts across the country, and agree legislation that temporarily permits video teleconferencing during the COVID-19 crisis, and that contains a clear sunset provision, is critical at this time. As Federal Defenders, we have two goals. The first is to assure that our clients, especially those who are detained, may continue to have access to the courts when necessary. The second is to maintain a safe and healthy work environment for everyone who enters the courthouse. We understand the judiciary shares those goals, and we stand ready to work with the courts to achieve them.

In the event Congress fails to act, we seek a simple directive from the Executive Committee or the Chief Justice: everyone in every federal court should keep safely distant by moving to all remote proceedings during this emergency. Some district courts already are allowing remote proceedings; however, there are districts where the physical presence of the defendant and counsel are still required, endangering public safety and the safety of those involved. District-by-district solutions are proving insufficient to address what is now a nationwide crisis.

We recognize that some proceedings will be delayed. Certain matters, however, need to go forward: initial appearances, bail hearings, some types of motions, guilty

pleas and sentencings. Hearings that will likely result in a defendant being released from custody are of paramount importance. We ask that, with the consent of the defendant, these proceedings be conducted with all participants in separate locations, interacting by various communication technology. Rule 43 of the Federal Rules of Criminal Procedure allows defendants to waive their appearance at some, but not at all, stages of a criminal case. For example, a defendant must personally appear to enter a guilty plea, even if that plea will result in a time-served sentence. At this time, facing a national emergency, waiver of a defendant's personal presence, with their consent, must be allowed. This will ensure that the courts remain functioning, and that the health and safety of all those involved are protected.

We thank you for your ongoing efforts and ask that you share this letter with the Executive Committee, with a request for swift action by the Judiciary if legislative efforts fail.

Sincerely,

/s/

Lisa B. Freeland
Federal Public Defender, Western District of Pennsylvania
Co-Chair, Defender Services Advisory Committee

cc: Honorable David G. Campbell
Honorable Audrey G. Fleissig
James C. Duff, Director of the Administrative Office of the United States
Courts
Cait T. Clarke, Chief, Defender Services, Administrative Office of the United
States Courts
Melanie S. Morgan, Co-Chair, Defender Services Advisory Group