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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia**

IN RE: SECOND EXTENSION OF
AUTHORIZATION FOR USE OF VIDEO
TELECONFERENCING AND
TELECONFERENCING FOR CERTAIN
CRIMINAL AND JUVENILE
DELINQUENCY PROCEEDINGS

Standing Order No. 20-75 (BAH)

Chief Judge Beryl A. Howell

ORDER

A second extension of the Court's Standing Order 20-17, *In Re: Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings*, Standing Order No. 20-17 (BAH) (March 29, 2020), is warranted and authorized by the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, 134 Stat. 281, Div. B, Title V, § 15002(b)(3)(A). The CARES Act requires that authorization for use of video teleconferencing or telephone conferencing be reviewed "on the date that is 90 days after the date on which [such] authorization . . . is issued," and every 90 days thereafter. CARES Act, Div. B, Title V § 15002(b)(3)(A)–(B). A first extension was issued on June 26, 2020, *see In Re: First Extension of Authorization for Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings*, Standing Order No. 20-54 (BAH) (June 26, 2020), and a second 90-day extension is authorized based on consideration of the **FINDINGS** set out below:

1. On March 13, 2020, the President of the United States declared a national emergency under the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, with respect to the Coronavirus Disease 2019 (“COVID-19”) global pandemic,¹ which national emergency remains in effect;

2. On March 29, 2020, the Judicial Conference of the United States found “that emergency conditions due to the national emergency declared by the President” with respect to COVID-19 “have materially affected and will materially affect the functioning of the federal courts generally,”² which finding remains in effect;

3. The United States District Court for the District of Columbia is a district court covered by the Judicial Conference finding, set out in paragraph 2, above;

4. The Centers for Disease Control and Prevention (“CDC”) and other public health authorities continue to advise taking precautions to reduce the possibility of exposure to COVID-19 during this global pandemic in order to slow the spread of the disease and, because “[t]he virus is . . . spread mainly from person-to-person . . . [b]etween people who are in close contact with one another,”³ the CDC further advises that individuals should engage in “social distancing” by maintaining a distance of at least “6 feet . . . from others when possible”⁴;

¹ *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, OFFICE OF THE PRESIDENT OF THE UNITED STATES, <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (last visited Sept. 22, 2020).

² Memorandum, dated March 29, 2020, from Jim Duff, Director of the Administrative Office of the Courts, Re: Update on CARES Act Provisions for Criminal Proceedings at 1; *see also* CARES Act, Div. B, Title V, §§ 15002(b)(1)–(2).

³ *How COVID-19 Spreads*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html> (last visited Sept. 22, 2020).

⁴ *Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19), May 2020*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html> (last visited Sept. 22, 2020).

5. Since June 22, 2020, the District of Columbia has continued to operate in the second phase of its recovery and reopening plan. Under the District of Columbia's Phase Two restrictions and guidance, the general public is advised to continue to maintain social distancing of 6 feet and to wear masks when in the presence of individuals outside their own household. Mass gatherings of more than 50 people are prohibited, and non-essential businesses may operate only at a 50 percent capacity.⁵ The District of Columbia continues to encourage telework⁶ and the D.C. public schools are providing remote instruction for the fall term.⁷ On July 22, 2020, the Mayor of the District of Columbia extended the declaration of a public emergency and public health emergency in D.C. through October 9, 2020, stating that "[t]he spread of COVID-19 remains an imminent threat to the health, safety, and welfare of District residents that requires the continued need for declarations of a public emergency and public health emergency."⁸ In the three months since the District of Columbia entered its Phase Two on June 22, 2020, COVID-19 case counts have fluctuated, and now remain at higher levels than in June. On June 22, 2020, the 7-day average of newly diagnosed cases was 38; on September 20, 2020, the 7-day average of new cases was 52.⁹ Within the D.C. metropolitan areas, while the state of Maryland began moving into its third stage of recovery on September 1,

⁵ Mayor's Order 2020-075, *Phase Two of Washington, DC Reopening*, available at <https://coronavirus.dc.gov/phasetwo> (last visited Sept. 22, 2020).

⁶ *Phase Two Guidance Coronavirus 2019 (COVID-19): Guidance for Office Buildings*, DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH, https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/publication/attachments/COVID-19_DC_Health_Guidance_for_Office_Buildings_2020.07.29_FINAL.pdf (last visited Sept. 22, 2020).

⁷ *DCPS to #ReopenStrong Virtually this Fall*, DISTRICT OF COLUMBIA PUBLIC SCHOOLS, <https://dcpsreopenstrong.com/updates/dcps-to-reopenstrong-virtually-this-fall/> (last visited Sept. 22, 2020).

⁸ Mayor's Order 2020-079, *Extensions of Public Emergency and Public Health Emergency and Delegations of Authority Authorized During COVID-19*, available at <https://coronavirus.dc.gov/page/mayor%E2%80%99s-order-2020-079-extensions-public-emergency-and-public-health-emergency-and-delegations> (last visited Sept. 22, 2020).

⁹ *Washington, D.C. Covid Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/washington-dc-coronavirus-cases.html> (last visited Sept. 22, 2020); see also *COVID-19 Surveillance*, OFFICE OF THE MAYOR OF THE DISTRICT OF COLUMBIA, <https://coronavirus.dc.gov/data> (last visited Sept. 22, 2020).

2020 and loosened some community restrictions,¹⁰ the counties nearest to D.C. remain in the second phases of their plans.¹¹ The state of Virginia has recently entered its third phase, but continues to emphasize the importance of limited in-person contacts.¹²

6. In the first several months of the pandemic, a number of individuals detained in the D.C. Department of Corrections' ("DOC") D.C. Jail tested positive for COVID-19, resulting in the isolation of those individuals and quarantine of other individuals detained at the D.C. Jail on charges pending in the U.S. District Court for the District of Columbia or in other local and federal courts in this metropolitan area.¹³ The cases and transmission of the virus within the D.C. Jail have been significantly curtailed in recent weeks, but DOC officials remain vigilant about the risks of transmission and further exposure from residents entering or re-entering the facility. Thus, the DOC and the United States Marshals Service have advised that limiting the number of in-person court proceedings, in compliance with strict safety protocols, is important for maintaining the health and safety of DOC residents.

7. On September 14, 2020, this Court began transitioning to Phase Two of its Continuity of Operations Plan for the COVID-19 Pandemic ("COOP Plan"). *See Continuity of*

¹⁰ *Governor Hogan Announces Beginning of Stage Three of Maryland's COVID-19 Recovery, Additional Safe and Gradual Reopenings*, OFFICE OF THE GOVERNOR OF MARYLAND, <https://governor.maryland.gov/2020/09/01/governor-hogan-announces-beginning-of-stage-three-of-marylands-covid-19-recovery-additional-safe-and-gradual-reopenings/> (last visited Sept. 22, 2020).

¹¹ Montgomery County Executive Order 114-20, *COVID-19 – Local Order Amending and Restating Order dated August 24, 2020*, <https://montgomerycountymd.gov/exec/Resources/Files/orders/114-20.pdf> (last visited Sept. 22, 2020); *Prince George's County Announces Additional Phase 2 Openings and Updated Safety Guidelines*, OFFICE OF THE PRINCE GEORGE'S COUNTY EXECUTIVE, <https://www.princegeorgescountymd.gov/ArchiveCenter/ViewFile/Item/3284> (last visited Sept. 22, 2020).

¹² *Safer at Home: Phase Three Guidelines for All Business Sectors*, OFFICE OF THE GOVERNOR OF VIRGINIA, <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/Forward-Virginia-Phase-Three-Guidelines---8-21-2020.pdf> (last visited Sept. 22, 2020).

¹³ *Public Safety Agency COVID-19 Case Data*, GOVERNMENT OF THE DISTRICT OF COLUMBIA, <https://coronavirus.dc.gov/page/public-safety-agency-covid-19-case-data> (compiling statistics on the prevalence of COVID-19 within the D.C. Department of Corrections) (last visited Sept. 22, 2020).

*Operations Plan during the COVID-19 Pandemic (with appendices), July 15, 2020.*¹⁴ Pursuant to the COOP Plan, during Phase Two, limited in-court proceedings are permitted when the presiding Judge determines, upon request of a party, that an in-person appearance is “necessary.” See COOP Plan at 15, ¶ 4; *id.*, Appendix 7 ¶ 1. The number of individuals present in the courtroom for any in-court proceeding must be kept to the minimum necessary with permission required from the presiding Judge for any non-participant in the proceeding to be physically present. COOP Plan, Appendix 7 ¶ 5(d). For public health and safety reasons, the expectation is that most proceedings will continue to be conducted remotely, via video or teleconference. *Id.* ¶ 1. Significant precautions will be taken for all in-person proceedings. See *Id.* ¶¶ 3–9.

8. Public health guidance continues to emphasize and recommend the maintenance of physical distancing of at least 6 feet, the wearing of masks and additional precautions, including encouraging telework and heightened precautions to protect vulnerable individuals, which may include a presiding Judge, a defendant, defense counsel of defendant’s choice or other court participants.¹⁵

9. In-court proceedings for 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 require close contact between criminal defendants and their counsel, government counsel, court staff, Deputy United States Marshals, Court Security Officers, and Judges, and may require the transport of detained individuals from various jail facilities to the courthouse within a confined vehicle space. Accordingly, many felony pleas under Rule 11 and felony sentencings under

¹⁴ The Court’s COOP Plan and updated appendices are available at <https://www.dcd.uscourts.gov/coronavirus-covid-19-response-information-and-announcements>.

¹⁵ See *Opening Up America Again*, OFFICE OF THE PRESIDENT OF THE UNITED STATES, <https://www.whitehouse.gov/openingamerica/> (describing phase two guidelines) (last visited Sept. 22, 2020).

Rule 32 cannot be conducted in person in this district without seriously jeopardizing the public health and safety of in-court participants and others with whom they may have contact.

It is therefore

ORDERED, based upon this Court's review of the current circumstances in this District, that the authorization for use of video conferencing or telephone conferencing under Standing Order No. 20-17 shall remain in effect until the earliest of the following:

- (A) Thirty days after the date on which the President's national emergency declaration terminates;
- (B) The date on which the Judicial Conference of the United States finds that emergency conditions due to the national emergency declared by the President no longer materially affect the functioning of either the Federal courts generally or this Court in particular; or
- (C) This Court determines that such authorization is no longer warranted; and it is further

ORDERED that this Court shall review the authorization for use of video teleconferencing or telephone conferencing every 90 days to determine whether this authorization is still warranted or whether extension of the authorization is necessary.

SO ORDERED.

Date: September 23, 2020



Beryl A. Howell

BERYL A. HOWELL
Chief Judge