

**FILED**

**MAR 16 2021**

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

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

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

Standing Order No. 21-14 (BAH)

Chief Judge Beryl A. Howell

**ORDER**

A fourth 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) (Mar. 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). This Court's initial authorization was issued March 29, 2020, and three 90-day extensions were issued subsequently, on June 26, 2020, September 23, 2020, and December 17, 2020.<sup>1</sup> A fourth 90-day extension is now authorized based on the **FINDINGS** set out below:

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<sup>1</sup> 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); *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) (Sept. 23, 2020); *In Re: Third Extension of Authorization for Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings*, Standing Order No. 20-92 (BAH) (Dec. 17, 2020)

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,<sup>2</sup> 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,”<sup>3</sup> 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,”<sup>4</sup> the CDC further advises that individuals should engage in “social distancing” by maintaining a distance of at least “6 feet . . . from others when possible.”<sup>5</sup>

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<sup>2</sup> *A Letter on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic*, OFFICE OF THE PRESIDENT OF THE UNITED STATES (Feb. 24, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/24/a-letter-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic/>.

<sup>3</sup> 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).

<sup>4</sup> *How COVID-19 Spreads*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html> (last visited Mar. 16, 2021).

<sup>5</sup> *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 Mar. 16, 2021).

5. Since June 22, 2020, the District of Columbia has operated in the second phase of its COVID-19 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. Although the District will be loosening some restrictions as of March 22, 2021 to allow outdoor gatherings of up to 50 people, additional recreation and sports activities, and some live entertainment, significant restrictions remain.<sup>6</sup> Indoor gatherings must be held in accordance with D.C. Health Department and CDC guidance, and private indoor gatherings are limited to ten people.<sup>7</sup> Indoor dining and gyms will be allowed to operate at 25% capacity.<sup>8</sup> The vast majority of students in D.C. public schools are continuing with distance learning from home.<sup>9</sup> On March 15, 2021, the Mayor of the District of Columbia announced a further extension of the public health emergency until May 20, 2021.<sup>10</sup>

6. Over the nearly nine months since the District of Columbia entered Phase Two on June 22, 2020, the COVID-9 case counts in D.C. have fluctuated. Recently, in January 2021, the case numbers surged upward in the District to a new high for the pandemic, reaching, on January 12, 2021, a 7-day average of 322 new cases daily.<sup>11</sup> In February 2021, case numbers dropped

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<sup>6</sup> GOVERNMENT OF THE DISTRICT OF COLUMBIA, CORONAVIRUS (COVID-19) SITUATIONAL UPDATE 20–26 (Mar. 15, 2021), [https://www.mayor.dc.gov/sites/default/files/dc/sites/coronavirus/release\\_content/attachments/Situational-Update-Presentation\\_03-15-21.pdf](https://www.mayor.dc.gov/sites/default/files/dc/sites/coronavirus/release_content/attachments/Situational-Update-Presentation_03-15-21.pdf) [hereinafter MAR. 15 CORONAVIRUS UPDATE].

<sup>7</sup> *Id.* at 20.

<sup>8</sup> *Id.* at 22, 24.

<sup>9</sup> *See Term 3 Planning*, DISTRICT OF COLUMBIA PUBLIC SCHOOLS, <https://dcpsreopenstrong.com/schedule/term3/> (last visited Mar. 16, 2021) (schools able to serve approximately 30% of students in-person).

<sup>10</sup> MAR. 15 CORONAVIRUS UPDATE, *supra* note 6, at 18.

<sup>11</sup> *Washington, D.C. Coronavirus Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/washington-dc-coronavirus-cases.html> (last visited Mar. 16, 2021); *see also COVID-19 Surveillance*, GOVERNMENT OF THE DISTRICT OF COLUMBIA, <https://coronavirus.dc.gov/data> (last visited Mar. 16, 2021).

significantly, with a 7-day average of 102 new cases daily on February 23, 2021.<sup>12</sup> In the last two weeks, however, D.C. has seen an increase of 12% in the average new cases per day.<sup>13</sup> On March 15, 2021, the 7-day average of new cases was 149, highlighting the need for continued caution.<sup>14</sup>

7. 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.<sup>15</sup> The cases and transmission of the virus within the D.C. Jail has been well contained in recent months, 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.

8. This Court transitioned to Phase Two of its Continuity of Operations Plan for the COVID-19 Pandemic ("COOP Plan") on September 14, 2020.<sup>16</sup> Pursuant to the COOP Plan, during Phase Two, limited in-court proceedings are permitted when the presiding Judge

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<sup>12</sup> *Washington, D.C. Coronavirus Map and Case Count*, *supra* note 11.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *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 Mar. 16, 2021).

<sup>16</sup> See U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, *Continuity of Operations Plan during the COVID-19 Pandemic (with appendices)*, July 15, 2020, <https://www.dcd.uscourts.gov/sites/dcd/files/Continuity%20of%20Operations%20Plan%20with%20Appendix%20for%20External.pdf>. The Court's COOP Plan and updated appendices are available at *Coronavirus (COVID-19) Response—Information and Announcements*, UNITED STATES DISTRICT COURT: DISTRICT OF COLUMBIA, <https://www.dcd.uscourts.gov/coronavirus-covid-19-response-information-and-announcements> (last visited Mar. 16, 2021).

determines, upon request of a party, that an in-person appearance is “necessary.” *See* COOP Plan at 15, ¶ 4; *id.*, App. 7 ¶ 2. 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, App. 7 ¶ 5(d). For public health and safety reasons, the expectation is that most proceedings will be conducted remotely, via video or teleconference. *Id.* ¶ 1. Significant precautions are taken for all in-person proceedings. *See id.* ¶¶ 3–9.

9. Pursuant to the COOP Plan, during Phase Two, “urgent” criminal trials are permitted, and this Court began a limited resumption of criminal jury trials as of March 15, 2021.<sup>17</sup> This Court has developed a detailed plan to conduct jury selections and trials in a way that maintains strict health and safety protocols for the safety of all participants. *See* COOP Plan, App. 8. As part of this plan, the number of trials allowed at any one time is limited to one per floor, with a maximum number of three in the courthouse, and multiple courtrooms will be used for each trial to ensure appropriate social distancing at all times. *Id.* ¶ 2(a).

10. The need to resume urgent criminal trials means that the Court’s ability to conduct other in-person proceedings safely is necessarily limited, both because of space constraints and because of the continuing need to limit the numbers of people in the courthouse.

11. 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,

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<sup>17</sup> *See In Re: Limited Resumption of Criminal Jury Trials in Light of Circumstances Related to the COVID-19 Pandemic*, Standing Order No. 21-10 (BAH) (Mar. 5, 2021).

which may include a presiding Judge, a defendant, defense counsel of defendant's choice or other court participants.<sup>18</sup>

12. The District of Columbia is progressing in its COVID-19 vaccination plan, and as of March 13, 2021, approximately 14.2% of residents were partially or fully vaccinated, with 6.8% being fully vaccinated.<sup>19</sup> As of March 15, 2021, all staff working in the court systems are eligible to be vaccinated in D.C.<sup>20</sup> All D.C. residents age 16 years and older are expected to be eligible to be vaccinated as of May 1, 2021.<sup>21</sup> Notwithstanding steady progress, however, the efforts to fully vaccinate D.C. residents and court staff will likely take additional months to complete.

13. 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 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

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<sup>18</sup> See *Priorities: COVID-19*, OFFICE OF THE PRESIDENT OF THE UNITED STATES, <https://www.whitehouse.gov/openingamerica/> (describing phase two guidelines) (last visited Mar. 16, 2021).

<sup>19</sup> MAR. 15 CORONAVIRUS UPDATE, *supra* note 6, at 3.

<sup>20</sup> *Id.* at 13–14.

<sup>21</sup> *Id.* at 17.

**ORDERED**, based upon this Court's review of the current circumstances in this District, that the authorization for use of video teleconferencing 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: March 16, 2020



*Beryl A. Howell*

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BERYL A. HOWELL  
Chief Judge