

FILED

NOV 22 2021

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

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

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

Standing Order No. 21-70 (BAH)

Chief Judge Beryl A. Howell

ORDER

A seventh 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, Sec. 6002, Div. B, Title V, § 15002(b)(3)(A), 134 Stat. 281, 529 (2020). The CARES Act requires that authorization for use of video teleconferencing or telephone conferencing be reviewed "[o]n the date that is 90 days after the date on which [such] authorization . . . is issued," and every 90 days thereafter. CARES Act, Sec. 6002, Div. B, Title V, § 15002(b)(3). This Court's initial authorization was issued March 29, 2020, and six extensions were issued subsequently, on June 26, 2020, September 23, 2020, December 17, 2020, March 16, 2021, June 11, 2021, and August 25, 2021.¹ A seventh 90-day extension is now authorized based on the

FINDINGS set out below:

¹ 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); *In Re: Fourth Extension of Authorization for Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile*

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, which national emergency remains in effect.² The Secretary of Health and Human Services has determined that a national public health emergency continues to exist.³
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,” which finding remains in effect.⁴
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 District of Columbia remains under a public emergency due to the COVID-19 pandemic.⁵
5. Over the course of the ongoing pandemic, COVID-19 case counts in the District of Columbia have fluctuated, with rates dropping significantly in the late summer of 2020, only

Delinquency Proceedings, Standing Order No. 21-14 (BAH) (Mar. 16, 2021); *In Re: Fifth Extension of Authorization for Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings*, Standing Order No. 21-33 (BAH) (June 11, 2021); and *In Re: Updated Status of Court Operations, Including Jury Trials, and Extension of CARES Act Authorization for Remote Proceedings in Light of Current Circumstances Relating to the COVID-19 Pandemic*, Standing Order No. 21-47 (BAH) (Aug. 25, 2021).

² *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/>.

³ *Renewal of Determination That a Public Health Emergency Exists*, DEPARTMENT OF HEALTH & HUMAN SERVICES (Oct. 15, 2021), <https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVIDI-15Oct21.aspx>.

⁴ Memorandum from James C. Duff, Director of the Administrative Office of the Courts, Update on CARES Act Provisions for Criminal Proceedings 1 (Mar. 29, 2020); *see also* CARES Act, Sec. 6002, Div. B, Title V, §§ 15002(b)(1)–(2).

⁵ *See* OFFICE OF THE MAYOR OF THE DISTRICT OF COLUMBIA, MAYOR’S ORDER 2021-119: EXTENSION OF PUBLIC EMERGENCY (Oct. 7, 2021), https://mayor.dc.gov/sites/default/files/dc/sites/mayormb/release_content/attachments/Mayor%27s%20Order%202021-119_Extension%20of%20PE_10.7.21.pdf.

to rise precipitously in November and December 2020. In the summer of 2021, daily case rates reached the lowest number in over a year, only to rise significantly in August and September, 2021, due to widespread circulation of the Delta variant of the virus.⁶ That recent surge appears to be on the decline generally, and rates in the District of Columbia have been relatively stable in the last two weeks. The 7-day average of new cases was 88 on November 16, 2021, as compared with the 7-day average of new cases of 89 on November 2, 2021.⁷ These numbers are significantly lower than the peak of September 19, 2021, when the 7-day average of new cases was 269.⁸ Yet, the current rate remains significantly higher than the lowest 7-day average of cases of nine reported in July 2021.⁹

6. The CDC continues to recommend that fully vaccinated individuals wear a mask in public indoor settings in areas with “substantial or high transmission,”¹⁰ and that individuals who are immunocompromised should all follow all recommended prevention measures regardless of their vaccination status.¹¹

7. The rate of transmission of COVID-19 in the District of Columbia is still considered “substantial.”¹² Nonetheless, on November 16, 2021, the Mayor of the District of Columbia announced that as of November 22, 2021, the District’s indoor mask mandate would be lifted in

⁶ GOVERNMENT OF THE DISTRICT OF COLUMBIA, CORONAVIRUS (COVID-19) SITUATIONAL UPDATE 4–5 (Aug. 16, 2021), https://coronavirus.dc.gov/sites/default/files/dc/sites/mayormb/release_content/attachments/COVID-Situational-Update-Presentation_08-16-21.pdf.

⁷ *Tracking Coronavirus in Washington, D.C.*, N.Y. TIMES, <https://www.nytimes.com/interactive/2021/us/washington-district-of-columbia-covid-cases.html> (Nov. 22, 2021); see also *COVID-19 Surveillance*, GOVERNMENT OF THE DISTRICT OF COLUMBIA, <https://coronavirus.dc.gov/data> (Nov. 22, 2021).

⁸ *Tracking Coronavirus in Washington, D.C.*, *supra* note 7.

⁹ *Id.*

¹⁰ *When You’ve Been Fully Vaccinated*, CENTERS FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html> (Oct. 15, 2021).

¹¹ *Id.*

¹² *COVID Data Tracker: COVID-19 Integrated County View*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://covid.cdc.gov/covid-data-tracker/#county-view> (select “District of Columbia”) (last visited Nov. 17, 2021).

favor of allowing individuals to follow more nuanced risk-based guidance.¹³ Notably, however, the District is continuing to require masks, regardless of vaccination status, in D.C. government facilities “where there is direct interaction between employees and the public.”¹⁴

8. In this Courthouse, the requirement that all individuals, regardless of vaccination status, wear a mask while in the public and non-public areas of the Courthouse remains in effect.¹⁵

9. Transmission of the virus within the D.C. Department of Corrections’ (“DOC”) D.C. Jail, where many defendants are detained pretrial on charges pending in this Court and in other local and federal courts in this metropolitan area, has been generally well contained due to protocols adopted and refined during the pandemic.¹⁶ Nevertheless, DOC experienced a rash of cases during the surge of the Delta variant in September and minimization of the risks of virus transmission and further exposure from residents entering or re-entering the facility remain a priority.

10. Local efforts to vaccinate the eligible D.C. population against COVID-19 are continuing. As of November 17, 2021, approximately 70.1% of eligible D.C. residents, and 60.6% of the total D.C. population, had been fully vaccinated.¹⁷ The CDC has confirmed that “COVID-19 vaccines are effective at helping protect against severe disease and death from the virus that causes COVID-19, including known variants currently circulating (e.g.,

¹³ Press Release, Exec. Off. of the Mayor of the District of Columbia, Mayor Bowser to Lift Indoor Mask Mandate on Monday, November 22 (Nov. 16, 2021) (www.mayor.dc.gov/release/mayor-bowser-lift-indoor-mask-mandate-monday-november-22).

¹⁴ *Id.*

¹⁵ *In Re: Reinstatement of Mask Requirement for All Individuals in Public and Non-Public Areas of Courthouse*, Standing Order No. 21-45 (BAH) (July 30, 2021).

¹⁶ *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 DOC) (last visited Nov. 17, 2021).

¹⁷ *COVID-19 Integrated County View*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://covid.cdc.gov/covid-data-tracker/#county-view|District%20of%20Columbia|11001|Risk|community_transmission_level (last visited Nov. 17, 2021).

Delta variant).”¹⁸ Accordingly, this Court has adopted a policy requiring all employees to be vaccinated, unless exempted for a medical reason or sincerely held religious belief.

11. This Court is committed to maximizing the ability to conduct criminal jury trials while maintaining all appropriate health and safety protocols. At least two courtrooms are being utilized for each trial, in order to allow all trial participants, judges, court staff, prospective and selected jurors to maintain recommended physical distancing and to limit the number of people in a courtroom at one time.

12. The need to conduct criminal trials in person 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 to maintain recommended physical distancing.

13. Public health guidance continues to emphasize physical distancing and masking for individuals who are not fully vaccinated or are immunocompromised, but the vaccination status of attorneys, jurors, members of the media and public, and others in the Courthouse may not be known. Accordingly, health and safety protocols, including mask and social distancing requirements, remain in place in the public spaces of the Courthouse and, subject to the presiding Judge’s direction, in courtrooms.¹⁹ The need to maintain appropriate protocols, which include the use of multiple courtrooms for jury trials and the requirements of physical distancing, necessarily restricts the Court’s ability to resume conducting all criminal proceedings in person.

¹⁸ *Key Things to Know About COVID-19 Vaccines*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html> (Oct. 7, 2021).

¹⁹ *See In Re: Modified Restrictions on Access to Courthouse During the COVID-19 Pandemic*, Standing Order No. 21-20 (BAH) (Apr. 2, 2021); *In Re: Status of Court Operations, Including Jury Trials, and Speedy Trial Act Exclusions in Light of Current Circumstances Relating to the COVID-19 Pandemic*, Standing Order No. 21-62 (BAH) (Nov. 1, 2021).

14. 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, who may be unvaccinated, from various jail facilities to the Courthouse within a confined vehicle space.

15. Termination of the CARES Act authority for videoconferencing proceedings would require that all criminal proceedings, including felony pleas under Rule 11 and felony sentencings under Rule 32, be conducted in person. Such a requirement poses continued serious jeopardy to the public health and safety of in-court participants and others with whom they may have contact given the circumstances as described above.

16. Both the U.S. Attorney's Office for the District of Columbia and the Office of the Federal Public Defender for the District of Columbia support this extension of the authorization for use of video teleconferencing or telephone conferencing in criminal proceedings, subject, as required under the CARES Act, to consent of the defendant, after consultation with counsel.

It is therefore

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 **February 18, 2022**, or 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 this authorization for use of video teleconferencing or telephone conferencing on or before **February 18, 2022**, to determine whether this authorization is still warranted and whether extension of the authorization is necessary.

SO ORDERED.

Date: November 22, 2021



Beryl A. Howell

BERYL A. HOWELL
Chief Judge