

**FILED**

**FEB 15 2022**

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

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

IN RE: EIGHTH EXTENSION OF  
AUTHORIZATION FOR USE OF VIDEO  
TELECONFERENCING AND  
TELECONFERENCING FOR CERTAIN  
CRIMINAL AND JUVENILE  
DELINQUENCY PROCEEDINGS AND  
SPEEDY TRIAL EXCLUSION

Standing Order No. 22-07 (BAH)

Chief Judge Beryl A. Howell

**ORDER**

The Court has continued to monitor the circumstances in this district relating to the COVID-19 pandemic, as detailed in the following **FINDINGS**:

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.<sup>1</sup> The Secretary of Health and Human Services has determined that a national public health emergency continues to exist.<sup>2</sup>
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

<sup>1</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>2</sup> *Renewal of Determination That a Public Health Emergency Exists*, DEPARTMENT OF HEALTH & HUMAN SERVICES (Jan. 14, 2022), <https://aspr.hhs.gov/legal/PHE/Pages/COVID19-14Jan2022.aspx>.

“have materially affected and will materially affect the functioning of the federal courts generally,” which finding remains in effect.<sup>3</sup>

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.<sup>4</sup>

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 and then rising precipitously in November and December 2020. In the summer of 2021, daily case rates reached the lowest number in over a year, but then rose substantially in August and September 2021, due to widespread circulation of the Delta variant of the virus.<sup>5</sup> More recently, the Omicron variant surged through the District of Columbia, causing COVID-19 case counts to reach peak numbers the first week of January 2022, with the 7-day average of new cases reaching 2,123 on January 4, 2022, a steep rise from one month earlier on December 4, 2021, when the 7-day average of new cases was 102.<sup>6</sup> In recent weeks the Omicron surge has receded such that, as of February 9, 2022, the 7-day average of new cases

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<sup>3</sup> 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* Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Pub. L. No. 116-136, 134 Stat. 281, Div. B, Title V, §§ 15002(b)(1)–(2).

<sup>4</sup> *See* OFFICE OF THE MAYOR OF THE DISTRICT OF COLUMBIA, MAYOR’S ORDER 2022-007: EXTENSION OF PUBLIC EMERGENCY (Jan. 6, 2022), [https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page\\_content/attachments/Mayor%27s%20Order%202022-007%20Extention%20of%20the%20Mayor%27s%20Covid%20-19%20Public%20Emergency%20%201-7-2022.pdf](https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/Mayor%27s%20Order%202022-007%20Extention%20of%20the%20Mayor%27s%20Covid%20-19%20Public%20Emergency%20%201-7-2022.pdf) (public emergency extended until March 17, 2022).

<sup>5</sup> 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](https://coronavirus.dc.gov/sites/default/files/dc/sites/mayormb/release_content/attachments/COVID-Situational-Update-Presentation_08-16-21.pdf).

<sup>6</sup> *Tracking Coronavirus in Washington, D.C.*, N.Y. Times, <https://www.nytimes.com/interactive/2021/us/washington-district-of-columbia-covid-cases.html> (Feb. 14, 2022).

was 184, a 51% decline over two weeks, but still substantially higher than in early December 2021.<sup>7</sup>

6. The rate of transmission of COVID-19 in the District of Columbia remains “high,” according to the Centers for Disease Control and Prevention (CDC).<sup>8</sup> As of February 15, 2022, the 7-day case rate per 100,000 population was 181, with 1,277 cases reported in the District in the prior seven days.<sup>9</sup>

7. The CDC continues to recommend that people, including children older than 2, wear a mask in public indoor settings in areas with “substantial or high transmission.”<sup>10</sup>

8. Local efforts to vaccinate the eligible D.C. population against COVID-19 are continuing. As of February 1, 2021, approximately 71% of D.C. residents age five or older had been fully vaccinated, and approximately 67% of the total D.C. population, had been fully vaccinated.<sup>11</sup>

9. With the onset of the Omicron surge, on December 20, 2021, the Mayor of the District of Columbia reimposed an indoor mask mandate, which mandate has now been extended until February 28, 2022.<sup>12</sup> Beginning March 1, 2022, however, the District will no longer require masks to be worn at many indoor venues but will require masks at schools, libraries, and other “D.C. government facilities with direct interaction between employees and the public.”<sup>13</sup> The

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

<sup>8</sup> *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 Feb. 15, 2022).

<sup>9</sup> *Id.*

<sup>10</sup> *Types of Masks and Respirators*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/types-of-masks.html> (Jan. 28, 2022).

<sup>11</sup> *COVID Data Tracker*, *supra* note 8.

<sup>12</sup> See OFFICE OF THE MAYOR OF THE DISTRICT OF COLUMBIA, MAYOR’S ORDER 2022-018: EXTENSION OF INDOOR MASK REQUIREMENTS (Jan. 26, 2022), [https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page\\_content/attachments/2022-018%20Extension%20of%20Indoor%20Mask%20Requirements.pdf](https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/2022-018%20Extension%20of%20Indoor%20Mask%20Requirements.pdf).

<sup>13</sup> GOVERNMENT OF THE DISTRICT OF COLUMBIA, CORONAVIRUS (COVID-19) SITUATIONAL UPDATE 7 (Feb. 14, 2022), [https://coronavirus.dc.gov/sites/default/files/dc/sites/mayoromb/release\\_content/attachments/Situational-Update-Presentation\\_02-14-22.pdf](https://coronavirus.dc.gov/sites/default/files/dc/sites/mayoromb/release_content/attachments/Situational-Update-Presentation_02-14-22.pdf).

District has adopted a vaccine mandate for all students 16 years of age or older in schools in D.C.<sup>14</sup> Although the District imposed a vaccination requirement for entrance into certain indoor establishments on January 15, 2022,<sup>15</sup> beginning February 15, 2022, “indoor venues will no longer be required to verify that patrons are vaccinated.”<sup>16</sup>

10. 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.<sup>17</sup> This Court has adopted a policy requiring all employees to be vaccinated, unless exempted for a medical reason or sincerely held religious belief.

11. 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.<sup>18</sup> Nevertheless, DOC experienced a rash of cases during the surge of the Delta variant in September and recently a more significant surge of cases from the Omicron variant. Minimization of the risks of virus transmission and further exposure from residents entering or re-entering the facility remain a priority.

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<sup>14</sup> GOVERNMENT OF THE DISTRICT OF COLUMBIA, CORONAVIRUS (COVID-19) SITUATIONAL UPDATE 8 (Jan. 27, 2022), [https://coronavirus.dc.gov/sites/default/files/dc/sites/mayormb/release\\_content/attachments/Situational-Update-Presentation\\_01-27-22.pdf](https://coronavirus.dc.gov/sites/default/files/dc/sites/mayormb/release_content/attachments/Situational-Update-Presentation_01-27-22.pdf).

<sup>15</sup> OFFICE OF THE MAYOR OF THE DISTRICT OF COLUMBIA, MAYOR’S ORDER 2021-148: VACCINATION REQUIREMENT FOR ENTRANCE INTO CERTAIN INDOOR ESTABLISHMENTS AND FACILITIES (Dec. 22, 2021), [https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page\\_content/attachments/2021-148%20Vaccination%20Requirement%20for%20Entrance%20into%20Certain%20Indoor%20Establishments%20and%20Facilities.pdf](https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/2021-148%20Vaccination%20Requirement%20for%20Entrance%20into%20Certain%20Indoor%20Establishments%20and%20Facilities.pdf).

<sup>16</sup> CORONAVIRUS (COVID-19) SITUATIONAL UPDATE, *supra* note 13, at 8.

<sup>17</sup> *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).

<sup>18</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> (last visited Feb. 15, 2022) (compiling statistics on the prevalence of COVID-19 within DOC).

12. On December 30, 2022, jury trials were suspended in this District due to the surge of COVID-19 cases driven by the Omicron variant and the public counters to the Clerk's Office were closed.<sup>19</sup> Jury trials resumed and the public counters to the Clerk's Office reopened on February 7, 2022, as the surge began to subside.

13. This Court is committed to maximizing the ability to conduct criminal jury trials and has developed a comprehensive plan for conducting trials that prioritizes the health and safety of all trial participants, courthouse staff, and those working in the courthouse. Details of that plan are available in Appendix 8 to the COOP Plan.<sup>20</sup> At least two courtrooms and up to three courtrooms are being utilized for each trial, in order to allow all trial participants, judges, court staff, and prospective and selected jurors to maintain recommended physical distancing and to limit the number of people in a courtroom at one time. Courtrooms have been retrofitted with plexiglass and otherwise reconfigured in accordance with expert health and safety recommendations, and numerous other steps have been taken throughout the Courthouse to mitigate the risk of virus transmission.

14. 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

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<sup>19</sup> *In Re Postponement of Jury Trials and Closing of Public Access to Clerk's Office in Light of Current Circumstances Relating to the COVID-19 Pandemic*, Standing Order No. 21-83 (BAH) (Dec. 30, 2021); *In Re Further Postponement of Jury Trials and Closing of Public access to Clerk's Office Due to Circumstances Relating to the COVID-19 Pandemic*, Standing Order No. 22-04 (Jan. 20, 2022).

<sup>20</sup> *See Continuity of Operations Plan for COVID-19 Pandemic*, app. 8, U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA (Dec. 13, 2021), [https://www.dcd.uscourts.gov/sites/dcd/files/Appendix\\_8\\_Updated\\_20211213.pdf](https://www.dcd.uscourts.gov/sites/dcd/files/Appendix_8_Updated_20211213.pdf).

requirements, remain in place in the public spaces of the Courthouse and, subject to the presiding Judge's direction, in courtrooms.<sup>21</sup>

15. 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.

16. This Court has developed and continues to maintain a master trial plan that prioritizes criminal trials with detained defendants and accounts for other factors such as length of detention, whether witnesses would be required to travel from out of town, and previously established trial dates.

17. 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.

18. Termination of the Coronavirus Aid, Relief, and Economic Security Act ("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.

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<sup>21</sup> 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).

19. In light of the Court's review of the aforementioned circumstances, it is hereby

**ORDERED:**

(a) Video Conferencing Authorization for Certain Criminal Proceedings. An eighth extension of the Court's Standing Order, *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 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 seven extensions were issued subsequently, on June 26, 2020, September 23, 2020, December 17, 2020, March 16, 2021, June 11, 2021, August 25, 2021, and November 22, 2021.<sup>22</sup> Based upon this Court's review of the current circumstances in this District, the authorization for use of video teleconferencing or telephone conferencing under Standing Order No. 20-17 shall remain in effect until **May 13, 2022**, or the earliest of the following:

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<sup>22</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); *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) (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); *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); and *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) (Nov. 22, 2021).

- (i) Thirty days after the date on which the President's national emergency declaration terminates;
- (ii) 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
- (iii) This Court determines that such authorization is no longer warranted.

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. The Court shall review this authorization for use of video teleconferencing or telephone conferencing on or before **May 13, 2022**, to determine whether this authorization is still warranted and whether extension of the authorization is necessary.

b. **Speedy Trial Act Exclusion for Postponed Criminal Trials.** In Standing Order Nos. 20-9, 20-19, 20-29, 20-62, 20-68, 20-89, 20-93, 21-10, 21-47, 21-62, and 21-79 this Court found that due to the exigent circumstances created by the COVID-19 pandemic, the time period from **March 17, 2020 through February 18, 2022** would be excluded in criminal cases, under the Speedy Trial Act, 18 U.S.C. §§ 3161 *et seq.* Due to the ongoing circumstances, as detailed above and in prior Standing Orders, and because conducting jury trials without the health and safety protocols and limitations before **May 13, 2022**, would jeopardize public health and safety and pose significant risks of exposure and transmission of the virus to trial participants, which would make continuation of a trial



impossible or result in a miscarriage of justice, *see* 18 U.S.C. § 3161(h)(7)(B)(i), the Court now finds that for those cases that cannot be tried consistent with those health and safety protocols and limitations, the additional time period from **February 18, 2022 through May 13, 2022** is excluded under the Speedy Trial Act as the ends of justice served by the continuances to protect public health and safety and the fair trial rights of a defendant outweigh the best interest of the public and any defendant's right to a speedy trial, pursuant to 18 U.S.C. § 3161(h)(7)(A). The presiding Judge in any criminal case for which a jury trial is postponed under this Order may make any additional findings and exclude additional time, as necessary and appropriate, regarding the scheduling of any new date for trial.

- c. **Access to the Clerk's Office and Courthouse:** The Courthouse is open to the public and the public counters of the District and Bankruptcy Courts' Clerk's Office reopened on February 7, 2022. All visitors to the Courthouse must abide by masking and other posted health and safety protocols.
- d. **Further Orders.** Further orders addressing court operations and proceedings in the exigent circumstances caused by the COVID-19 pandemic will be issued as circumstances warrant.

**SO ORDERED.**

Date: February 15, 2022



*Beryl A. Howell*

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BERYL A. HOWELL  
Chief Judge