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

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

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)

Chief Judge Beryl A. Howell

ORDER

The national emergency relating to the COVID-19 pandemic was declared on March 13, 2020. Since then, this Court has remained open and operating, imposing restrictions as necessary to protect public health and safety and easing restrictions when current conditions relating to the pandemic have allowed. Jury trials were suspended at the outset of the pandemic, with criminal jury trials resuming in March 2021 and civil jury trials resuming in June 2021 on a limited basis. All trials held have been conducted with significant precautions to protect the health and safety of all participants.¹ The Court has continued to monitor the state of the pandemic in this area and now finds, based on the recent explosion of COVID-19 cases in the District of Columbia driven by circulation of the highly contagious Omicron variant, that **all jury trials must be suspended until January 24, 2022**, in order to protect the health and safety of trial participants and others in the E. Barrett Prettyman United States Courthouse and the William B. Bryant Annex (the "Courthouse"). The public counters of the Clerk's Office will also be closed until that date.

This decision is based on the following **FINDINGS**:

¹ See *In Re: Limited Resumption of Criminal Jury Trials in Light of Current Circumstances Relating to the COVID-19 Pandemic*, Standing Order No. 21-10 (BAH) (Mar. 5, 2021); *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.

- (a) 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
- (b) 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 The United States District Court for the District of Columbia is a district court covered by the Judicial Conference finding.
- (c) The District of Columbia remains under a public emergency due to the COVID-19 pandemic.⁵
- (d) Over the course of the ongoing pandemic, COVID-19 case counts in the District of Columbia have fluctuated. In the last month, however, the Omicron variant has caused an alarming explosion of cases in the District of Columbia. On December 27, 2021, the daily case rate was 273.6 per 100,000 population, as compared to a rate of 13.2 per 100,000 population a

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/COVDI-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* 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).

⁵ 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/mayoromb/release_content/attachments/Mayor%27s%20Order%202021-119_Extension%20of%20PE_10.7.21.pdf.

month earlier.⁶ The weekly case rate rose from 92.14 per 100,000 population to 1,915.2 per 100,000 population over the same month period.⁷ According to data maintained by the Centers for Disease Control and Prevention (“CDC”), cases in the District of Columbia have increased 119.74% over the prior seven days, with new hospital admissions increasing 105%.⁸ The test positivity rate was 18.53% for the past week.⁹ Community transmission remains “high.”¹⁰

- (e) In response to these rising rates, the Mayor of the District of Columbia has reinstated a broad indoor mask mandate in the District¹¹ and has announced a vaccination requirement, effective January 15, 2022, for entrance into certain indoor establishments in the District.¹² The District has also expanded the availability of COVID-19 tests and testing sites, adopted a new vaccine mandate for D.C. government employees, and taken other immediate steps to address the urgent and ongoing situation in the District.¹³
- (f) Local efforts to vaccinate the eligible D.C. population against COVID-19 are continuing. As of December 29, 2021, although 66.4% of the total D.C. population had been fully

⁶ See GOVERNMENT OF THE DISTRICT OF COLUMBIA, CORONAVIRUS (COVID-19) SITUATIONAL UPDATE 3 (Dec. 29, 2021), https://mayor.dc.gov/sites/default/files/dc/sites/mayoromb/release_content/attachments/Situational-Update-Presentation_12-29-2021.pdf.

⁷ *Id.*

⁸ *COVID Data Tracker: COVID-19 Integrated County View*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://covid.cdc.gov/covid-data-tracker/#county-view> (last visited Dec. 30, 2021).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Mayor Bowser Unveils COVID-19 Action Plan*, EXECUTIVE OFFICE OF THE MAYOR OF THE DISTRICT OF COLUMBIA (Dec. 20, 2021), <https://mayor.dc.gov/release/mayor-bowser-unveils-covid-19-action-plan>.

¹² 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.

¹³ EXECUTIVE OFFICE OF THE MAYOR OF THE DISTRICT OF COLUMBIA, *supra* note 11.

vaccinated with the original one or two shot protocol, only 22.8% had been fully vaccinated *and* received the recommended booster.¹⁴

(g) On December 27, 2021, CDC Director Rochelle Walensky announced updated recommendations for isolation and quarantine that balance “what we know about the spread of the virus and the protection provided by vaccination and booster doses.”¹⁵ She noted that “[t]he Omicron variant is spreading quickly and has the potential to impact all facets of our society,” adding that people should get vaccinated and boosted, wear a mask in public indoor settings in areas with substantial and high community transmission, and take a test before gathering.¹⁶ The CDC’s data from South Africa and the United Kingdom suggest that the standard two dose mRNA vaccine protocol is approximately 35% effective against the Omicron variant but that a booster dose “restores vaccine effectiveness against infection to 75%.”¹⁷

(h) As noted in prior Standing Orders, this Court has developed a comprehensive plan for conducting trials that prioritizes the health and safety of all trial participants, staff and those working in the Courthouse. Details of that plan are available in Appendix 8 to the COOP Plan.¹⁸ The Court has also implemented a vaccine policy for staff. Nevertheless, given the emergence of the highly-contagious Omicron variant and the extraordinarily high case rates currently in the District of Columbia, as well as the high rates of “breakthrough” cases,

¹⁴ GOVERNMENT OF THE DISTRICT OF COLUMBIA, *supra* note 6, at 9.

¹⁵ *CDC Updates and Shortens Recommended Isolation and Quarantine Period for General Population*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Dec. 27, 2021), <https://www.cdc.gov/media/releases/2021/s1227-isolation-quarantine-guidance.html>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, *supra* note 1, at app. 8.

particularly in individuals who have not yet received a vaccine booster, concerns about the risks of transmission remain.

In light of the aforementioned circumstances, after consultation with the Federal Public Defender's Office and U.S. Attorney's Office for the District of Columbia, both of which support the suspension of jury trials until at least January 24, 2022, and in recognition of the current high rates of transmission in the District of Columbia and the need for continued caution to protect public health and safety, it is hereby **ORDERED**:

1. **Jury Trials**: Effective immediately, all jury trials are suspended until **January 24, 2022**. The Court will reassess the local public health situation before that date to determine whether jury trials may resume on that date or should be further suspended. This Court previously determined that a Speedy Trial Act exclusion was appropriate through February 18, 2022, for those criminal cases that cannot be tried consistent with health and safety protocols before that date, as the ends of justice served by the continuances to protect public health and safety and the fair trial rights of a defendant outweighed 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). *See In Re: Speedy Trial Act Exclusions in Light of Current Circumstances Relating to the COVID-19 Pandemic*, Standing Order No. 21-79 (BAH) (Dec. 13, 2021). The presiding Judge in any criminal case for which a jury trial is postponed may make any additional findings and exclude additional time, as necessary and appropriate, regarding the scheduling of any new date for trial.

2. **Public Access to Clerk's Office**: The public counters of the Clerk's Office are closed, effective immediately, until at least **January 24, 2022**. The Clerk's Office itself will remain open during this time with "essential" personnel on site and many employees working remotely.

3. **Limited In-Person Proceedings**: Most proceedings will continue to be conducted remotely using the Court's teleconference or videoconference capabilities. Videoconferencing authority for certain criminal proceedings remains in effect until February 18, 2022. *See 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). Although the Court recognizes there may be a need to conduct certain proceedings in person, the expectation is that in-person proceedings will be limited in number until at least January 24, 2022.

4. **Further Orders**: Further orders addressing court operations and proceedings in the exigent circumstances created by the COVID-19 pandemic will be issued as circumstances warrant.

SO ORDERED.

Date: December 30, 2021



BERYL A. HOWELL
Chief Judge