UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Standing Order No. 22-27 (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.[1] The Secretary of Health and Human Services has determined that a national public health emergency continues to exist.[2]

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.[3]

---

[1] Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic, 87 Fed. Reg. 10289 (Feb. 23, 2022).

[2] *Renewal of Determination That A Public Health Emergency Exists*, DEPARTMENT OF HEALTH & HUMAN SERVICES (Apr. 12, 2022), https://aspr.hhs.gov/legal/PHE/Pages/COVID19-12Apr2022.aspx.

[3] Memorandum from James C. Duff, Director of the Administrative Office of the United States 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, Sec. 6002, Div. B., Title VI, §§ 15002(b)(1)–(2), 134 Stat. 281, 528–29; Memorandum from Hon. Roslynn R. Mauskopf, Director of the Administrative Office of the

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 COVID-19 pandemic continues to impact lives in the District of Columbia. Since March 2020, 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.[4] 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.[5] Thereafter, the Omicron surge receded, only for cases to surge again, though more modestly, in April, driven by a newer COVID-19 variant. For context, on February 9, 2022, the 7-day average of new cases was 184.[6] One month later, on March 9, 2022, the 7-day average had dropped to 58, but by April 10, 2022, it had risen again to 144.[7] As of May 9, 2022, the 7-day average of new cases in the District was 181.[8]

5. The Centers for Disease Control and Prevention (CDC) considers a combination of three metrics over the most recent seven-day period to assess local COVID-19 community

---

United States Courts, Continuation of National Emergency & Remote Proceedings under CARES Act 1 (Mar. 1, 2022).

[4] 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.

[5] *Tracking Coronavirus in Washington, D.C.*, N.Y. TIMES, https://www.nytimes.com/interactive/2021/us/washington-district-of-columbia-covid-cases.html (May 10, 2022).

[6] *Id.*

[7] *Id.*

[8] *Id.*

levels as low, medium or high.[9] The three metrics considered are: new COVID-19 hospital admissions per 100,000 population, percentage of hospital beds filled by COVID-19 patients, and total new COVID-19 cases per 100,000.[10] Under the CDC's current framework, the District of Columbia's community level currently is "low."[11] Recent reports, however, call into question the accuracy of this determination. The District, since April 27, has not reported to the CDC any updated data on the number of new COVID-19 cases in the District—one of the metrics the CDC considers in assessing COVID-19 community levels—or on the number of deaths from the virus.[12] Unsurprisingly, due to this omission, the CDC currently reports the District's case rate per 100,000 metric as zero.[13] Comparatively, the suburbs surrounding the District, Montgomery County in Maryland and Arlington County and the City of Falls Church in Virginia, have the highest case rates in both states.[14] As of May 5, 2022, Montgomery County's case rate per 100,000 was 193 cases, with a community level designation of low,[15] Arlington County's case rate was 375 cases with a community level

---

9 *COVID-19 Community Levels*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/coronavirus/2019-ncov/science/community-levels.html (Mar. 24, 2022).

10 *Id.*

11 *COVID-19 Integrated County View (District of Columbia)*, 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 May 10, 2022).

12 *Id.*; *see also* Julie Zauzmer Weil, *D.C. Hasn't Reported Daily COVID Case Counts to the CDC Since April 27*, WASH. POST (May 9, 2022), https://www.washingtonpost.com/dc-md-va/2022/05/09/dc-covid-case-counts-stopped/ (noting that "[t]he District stopped reporting daily case data on its own website two months ago").

13 *COVID-19 Integrated County View (District of Columbia)*, *supra* note 11.

14 Weil, *supra* note 12.

15 *COVID-19 Integrated County View* (*Montgomery County, Maryland)*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=Maryland&data-type=&null=CommunityLevels&list_select_map_data_metro=all&list_select_county=24031 (last visited May 10, 2022).

designation of medium,[16] and the City of Falls Church's case rate was 280 cases with a community level designation of medium.[17]

6. Although the District of Columbia no longer requires masks to be worn at many indoor venues, the District continues to require masks at schools, libraries, and other "D.C. government facilities with direct interaction between employees and the public."[18] Similarly to the current policy of the District of Columbia, in this courthouse, where direct interaction between employees and the public routinely occurs due to the obligatory presence of litigants, parties, counsel, and District residents for court proceedings and jury service, the requirement that all individuals, regardless of vaccination status, wear a mask while in the public areas of the courthouse remains in effect.[19] This Court has also adopted a policy requiring all employees to be fully vaccinated, unless exempted for a medical reason or sincerely held religious belief.

7. 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.[20] Nevertheless, DOC experienced a rash of cases during the surge of the Delta variant in September and a more significant surge

---

16 *COVID-19 Integrated County View* (*Arlington County, Virginia)*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=Virginia&data-type=&null=CommunityLevels&list_select_map_data_metro=all&list_select_county=51013 (last visited May 10, 2022).

17 *COVID-19 Integrated County View* (*Falls Church City, Virginia)*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=Virginia&data-type=CommunityLevels&null=CommunityLevels&list_select_map_data_metro=all&list_select_county=51610 (last visited May 10, 2022).

18 GOVERNMENT OF THE DISTRICT OF COLUMBIA, CORONAVIRUS (COVID-19) SITUATIONAL UPDATE 7 (Feb. 14, 2022), https://coronavirus.dc.gov/sites/default/files/dc/sites/mayormb/release_content/attachments/Situational-Update-Presentation_02-14-22.pdf.

19 *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).

20 *Public Safety Agency COVID-19 Case Data*, GOVERNMENT OF THE DISTRICT OF COLUMBIA (Feb. 28, 2022), https://coronavirus.dc.gov/page/public-safety-agency-covid-19-case-data (compiling statistics on the prevalence of COVID-19 within DOC).

of cases from the Omicron variant. Recently, DOC has seen a modest uptick in new cases, with 22 residents testing positive over the last four days, and a total of 52 residents in quarantine as of May 10, 2022. According to DOC officials, only approximately 42% DOC residents are fully vaccinated. Minimization of the risks of virus transmission and further exposure from residents entering or re-entering the facility remain a priority.

8. At the outset of the pandemic in March 2020, all jury trials were suspended in this Court and only authorized to resume on a limited basis in March 2021.[21] On December 30, 2021, jury trials were again suspended due to the surge of COVID-19 cases driven by the Omicron variant, and resumed on February 7, 2022, as the surge began to subside.[22] Since that time, jury trials have been conducted successfully with extensive safety protocols in place. As the number of jury trials being held increase, the number of persons summoned and required to enter the courthouse for jury service is increasing, raising concomitant risks of transmission of the virus. Use of remote proceedings to reduce the number of persons required to be physically present in the courthouse may mitigate that risk.

9. 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.[23] Presiding judges have the option of using multiple

---

[21] *In Re: Court Operations in Exigent Circumstances Created by the COVID-19 Pandemic*, Standing Order 20-09 (BAH) (Mar. 16, 2020), ¶¶ (a)–(f) (suspension of jury trials); *In Re: Limited Resumption of Criminal Jury Trials in Light of Current Circumstances Relating to the COVID-19 Pandemic*, Standing Order 21-10 (BAH) (Mar. 5, 2021) (resumption of jury trials).

[22] *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 (BAH) (Jan. 20, 2022).

[23] *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.

courtrooms for jury selection and/or trial, in order to allow trial participants, judges, court staff, and prospective and selected jurors to maximize 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 and to assure all grand jurors, petit jurors, trial participants, and others working in or required to enter the courthouse of the same.

10. 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. Moreover, not everyone can be vaccinated or boosted, and even with vaccination, persons with compromised immune systems are still at risk. Accordingly, health and safety protocols, including masking, remain in place in the public spaces of the courthouse and, subject to the presiding Judge's direction, in courtrooms.[24]

11. To promote public health and safety, presiding judges are permitted to use multiple courtrooms for jury selections and/or trials and to designate an entire courtroom as a "jury room" given the small size many of the jury rooms in the courthouse. The use of multiple spaces for one trial necessarily limits the Court's capacity to conduct other proceedings in person.

---

[24] *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).

12. Currently over 650 criminal cases are pending in this Court, many of which arose out of the events at the United States Capitol on January 6, 2021, and many defendants in those cases reside outside of the District of Columbia, as do their counsel.

13. On March 29, 2020, this Court authorized use of video teleconferencing, or teleconferencing if video conferencing is not reasonably available, for certain criminal proceedings pursuant to the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, § 6002, Div. B, Title V, § 15002(b)(3)(A), 134 Stat. 281, 529 (2020). *See In Re: Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings*, Standing Order No. 20-17 (BAH) (Mar. 29, 2020).

14. 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 VI, § 15002(b)(3). Following this Court's initial authorization of March 29, 2020, eight extensions have been issued, on June 26, 2020, September 23, 2020, December 17, 2020, March 16, 2021, June 11, 2021, August 25, 2021, November 22, 2021, and February 15, 2022.[25]

---

[25] *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); and *In Re: Eighth Extension of Authorization for Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings*, Standing Order No. 22-07 (BAH) (Feb. 15, 2022).

15. The COVID-19 pandemic continues to have a material effect on the functioning of this Court, with the impact of COVID-19 on court operations anticipated to persist for at least 90 more days. Extending the authority to utilize videoconferencing or teleconferencing for the proceedings listed in the CARES Act, § 15002(b)(1), is necessary to prioritize the use of courtroom space for trials while conducting other criminal proceedings remotely, and to reduce the risk of exposure and transmission of the virus that may still arise from in-person proceedings. It also limits the need for travel by out-of-town defendants, families, attorneys, and interested public, and the health and safety risks posed to some by such travel in order to appear in person in the courthouse. It limits the numbers of people in the courthouse generally, and ensures that certain proceedings may continue on schedule even if a participant, or judge, is required to be in quarantine or is otherwise impacted by the pandemic and unable to appear in person.

Accordingly, in light of the Court's review of the aforementioned circumstances, it is hereby **ORDERED**:

(a) Video Conferencing Authorization for Certain Criminal Proceedings.

Pursuant to the CARES Act, § 15002(b)(1), authorization for use of video teleconferencing (or telephone conferencing if video conferencing is not reasonably available), is **continued for 90 days until August 11, 2022**, or the earliest of the circumstances set forth, *infra*, in paragraph **(c)**, subject to the consent of the defendant after consultation with counsel, *see* CARES Act, § 15002(b)(4), for the following criminal proceedings enumerated in the CARES Act, § 15002(b)(1):

i. Detention hearings under section 3142 of title 18, United States Code;

ii. Initial appearances under Rule 5 of the Federal Rules of Criminal Procedure;

iii. Preliminary hearings under Rule 5.1 of the Federal Rules of Criminal Procedure;

iv. Waivers of indictment under Rule 7(b) of the Federal Rules of Criminal Procedure;

v. Arraignments under Rule 10 of the Federal Rules of Criminal Procedure;

vi. Probation and supervised release revocation proceedings under Rule 32.1 of the Federal Rules of Criminal Procedure;

vii. Pretrial release revocation proceedings under section 3148 of title 18, United States Code;

viii. Appearances under Rule 40 of the Federal Rules of Criminal Procedure;

ix. Misdemeanor pleas and sentencings as described in Rule 43(b)(2) of the Federal Rules of Criminal Procedure; and

x. Proceedings under Chapter 403 of title 18, United States Code, except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings.

(b) Video Conferencing Authorization for Felony Pleas and Sentencings.

Pursuant to the CARES Act, § 15002(b)(2), authorization for use of video teleconferencing(or telephone conferencing if video conferencing is not reasonably available), is continued **for 30 days until June 12, 2022**, or the earliest of the circumstances set forth, *infra*, in paragraph **(c)**, for felony pleas and sentencings, under Rules 11 and 32, respectively, of the Federal Rules of Criminal Procedure, as such proceedings 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 or may require significant travel of defendants or attorneys from out of town. Requiring all such felony pleas and sentencings to be conducted in person would pose 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. This authorization is subject, as required by the CARES Act, to a finding by the presiding judge in a particular case that a plea or sentencing cannot be further delayed without serious harm to the interests of justice, *see* CARES Act, § 15002(b)(2)(A), and to the consent of the defendant, after consultation with counsel, *see id.* § 15002(b)(4). The authority of this paragraph applies with respect to equivalent plea and sentencing, or disposition, proceedings under chapter 403 of title 18, United States Code. *See id.* § 15002(b)(2)(B).

(c) Expiration of Authorizations

The authorizations for video and teleconferencing set forth, *supra*, in paragraphs **(a)** and **(b)**, shall remain in effect until the dates indicated above or the earliest of the following:

(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 authorization is no longer warranted.

The Court shall review the authorizations for use of video teleconferencing or telephone conferencing on or before the dates indicated in sections (a) and (b) to determine whether such authorizations are still warranted and whether any extensions are necessary.

(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: May 12, 2022

BERYL A. HOWELL
Chief Judge