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

IN RE: SPEEDY TRIAL ACT EXCLUSIONS
IN LIGHT OF CURRENT
CIRCUMSTANCES RELATING TO THE
COVID-19 PANDEMIC

Standing Order No. 21-79 (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, with necessary adjustments and restrictions based on local health and safety conditions relating to the pandemic. Criminal jury trials, suspended at the outset of the pandemic, resumed in March 2021, and are being conducted with significant precautions to protect the health and safety of all participants.¹ The Court remains committed to maximizing its capacity to conduct jury trials while adhering to all appropriate protocols. Since current circumstances require the use of at least two courtrooms for each trial, the number of trials that may be conducted simultaneously at the E. Barrett Prettyman United States Courthouse and the William B. Bryant Annex (the “Courthouse”) necessarily continues to be restricted.

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

- (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

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, <https://www.dcd.uscourts.gov/continuity-operations-plan-covid-19-pandemic> (last visited Dec. 13, 2021).

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, with rates dropping significantly in the late summer of 2020, only 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 Although case rates dipped again during the fall, they are now once again on the rise. On December 12, 2021, the

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* 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.

⁶ *See* 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/mayoromb/release_content/attachments/COVID-Situational-Update-Presentation_08-16-21.pdf.

7-day average of new cases in the District was 182, a 77% increase over two weeks ago, and over double the 7-day average of 88 on November 16, 2021.⁷ In the last seven days, the District of Columbia recorded a total of 1,272 new cases and a case rate of 180 per 100,000.⁸ The new case numbers represent a 38% increase over the previous 7-day period.⁹

- (e) The Centers for Disease Control and Prevention (“CDC”) continues to recommend that fully vaccinated individuals wear a mask in public indoor settings in areas with “substantial or high transmission,” and that individuals who are immunocompromised should follow all recommended prevention measures regardless of their vaccination status.¹⁰
- (f) The rate of transmission of the COVID in the District of Columbia is considered by the CDC to be “high.”¹¹
- (g) On November 22, 2021, the District’s indoor mask mandate was lifted in favor of allowing individuals to follow more nuanced risk-based guidance.¹² Notably, however, the District continues to require masks, regardless of vaccination status, in D.C. government facilities “where there is direct interaction between employees and the public.”¹³
- (h) 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.¹⁴

⁷ *Tracking Coronavirus in Washington, D.C.*, N.Y. TIMES, <https://www.nytimes.com/interactive/2021/us/washington-district-of-columbia-covid-cases.html> (Dec. 13, 2021); *see also COVID-19 Surveillance*, GOVERNMENT OF THE DISTRICT OF COLUMBIA, <https://coronavirus.dc.gov/data> (Dec. 9, 2021).

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. 13, 2021).

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 *COVID Data Tracker: COVID-19 Integrated County View*, *supra* note 8.

¹² 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).

¹³ *Id.*

¹⁴ *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).

- (i) 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.¹⁵ 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 remains a priority.
- (j) Local efforts to vaccinate the eligible D.C. population against COVID-19 are continuing. As of December 12, 2021, 63% of the total D.C. population, had been fully vaccinated.¹⁶ The CDC has confirmed that “COVID-19 vaccines are effective at helping protect against severe disease and death from variants of the virus that causes COVID-19, including known variants currently circulating (e.g., Delta variant).”¹⁷ Accordingly, this Court has adopted a policy requiring all employees to be vaccinated, unless exempted for a medical reason or sincerely held religious belief.
- (k) The Court is monitoring developments with respect to the Omicron variant, a new variant of SARS-CoV-2 first detected in specimens collected in Botswana on November 11, 2021, and in South Africa on November 14, 2021.¹⁸ The World Health Organization classified Omicron as a “Variant of Concern” on November 26, 2021, with the United States following suit on November 30, 2021.¹⁹ The CDC reports that “[t]he Omicron variant likely will

¹⁵ *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> (Dec. 9, 2021) (compiling statistics on the prevalence of COVID-19 within DOC).

¹⁶ *COVID Data Tracker: COVID-19 Integrated County View*, *supra* note 8.

¹⁷ *Key Things to Know About COVID-19 Vaccines*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html> (Nov. 30, 2021).

¹⁸ *Omicron Variant: What You Need to Know*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html> (Dec. 13, 2021).

¹⁹ *Id.*

spread more easily than the original SARS-CoV-2 virus and how easily Omicron spreads compared to Delta remains unknown.”²⁰ Although it is not yet known whether Omicron will cause more severe illness, the CDC expects that current vaccines will “protect against severe illness, hospitalizations, and deaths due to infection with the Omicron variant. However, breakthrough infections in people who are fully vaccinated are likely to occur.”²¹

Significantly, the “CDC expects that anyone with Omicron infection can spread the virus to others, even if they are vaccinated or don’t have symptoms.”²² On December 12, 2021, the District of Columbia confirmed its first cases of the Omicron variant, all four of which were unrelated.²³

- (l) This Court 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.²⁴

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. Nevertheless, particularly given the emergence of the Omicron variant, vigilance in adhering to social distancing and masking precautions continues to be necessary.

- (m) 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

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Press Release, Exec. Off. of the Mayor of the District of Columbia, DC Health Confirms Four COVID-19 Cases Involving the Omicron Variant in the District (Dec. 12, 2021) (<https://mayor.dc.gov/release/dc-health-confirms-four-covid-19-cases-involving-omicron-variant-district>).

²⁴ See *Continuity of Operations Plan for COVID-19 Pandemic*, app. 8, *supra* note 1.

detention, whether witnesses would be required to travel from out of town, and previously established trial dates.

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 concur with this **ORDER**, and in recognition of the need to continue to be cautious due to the continued circulation of the highly contagious Delta variant and the emergence of the Omicron variant, it is hereby

ORDERED:

1. **Limited Capacity for Jury Trials.** This Court's capacity to conduct jury trials is necessarily limited by the availability of courtrooms and the continuing need for stringent health and safety protocols. The current health and safety protocols require that each jury trial utilize at least two courtrooms. The Court anticipates that capacity will remain limited until at least **February 18, 2022**.

2. **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, and 21-62 this Court found that due to the exigent circumstances created by the COVID-19 pandemic, the time period from **March 17, 2020 through December 15, 2021** 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 **February 18, 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 **December 15, 2021 through February 18, 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.

3. **Videoconferencing Authorization for Certain Criminal Proceedings.** In Standing Order 21-70, this Court determined that 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), was 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). *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). As set forth in Standing Order 21-70, the authorization for video and telephone conferencing of certain criminal proceedings continues through **February 18, 2022**. *Id.* at 7. Prior to that date, the Court will determine, after consultation with the U.S. Attorney's Office for the District of Columbia and the Office of the Federal Public Defender for the District of Columbia, whether an additional extension of the CARES Act authorization and Speedy Trial Act exclusions are warranted and will issue an order accordingly.

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 13, 2021

The signature of Beryl A. Howell is written in cursive over a horizontal line. To the left of the signature is the official seal of the United States District Court for the District of Columbia, which features an eagle with a shield, holding an olive branch and arrows, with a constellation of stars above its head.

BERYL A. HOWELL
Chief Judge