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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: USE OF VIDEO
TELECONFERENCING AND
TELECONFERENCING FOR CERTAIN
CRIMINAL AND JUVENILE
DELINQUENCY PROCEEDINGS

Standing Order No. 20-17 (BAH)
Chief Judge Beryl A. Howell

ORDER

Upon consideration of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), H.R. 748, enacted on March 27, 2020, and pertinent legal and factual circumstances, including—

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 pandemic¹;
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”²;
3. The Centers for Disease Control and Prevention (“CDC”) and other public health authorities have advised taking precautions to reduce the possibility of exposure to COVID-19 during

¹ *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, OFFICE OF THE PRESIDENT OF THE UNITED STATES, <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (last visited Mar. 29, 2020).

² Memorandum, dated March 29, 2020, from Jim Duff, Director of the Administrative Office of the Courts, RE: UPDATE ON CARES ACT PROVISIONS FOR CRIMINAL PROCEEDINGS, at 1; *see also* CARES Act, Div. B, Title V, § 15002(b)(1) & (b)(2).

this global pandemic in order to slow the spread of the disease and, because “[t]he virus is . . . spread mainly from person-to-person . . . [b]etween people who are in close contact with one another,”³ the CDC further advises that individuals should engage in “social distancing” by maintaining a distance of at least “6 feet . . . from others when possible”⁴;

4. In this metropolitan region, states of emergency due to COVID-19 have been declared by the Mayor of the District of Columbia on March 11, 2020, and by the Governors of the contiguous states of Maryland and Virginia, on March 16 and March 17, 2020, respectively, with recommendations issued to “utilize telework as much as possible”⁵ and to “[p]ractice social distancing”⁶;
5. As of today’s date, several individuals detained in the D.C. Department of Corrections’ D.C. Jail have tested positive for COVID-19, resulting in the isolation of those individuals and quarantine of other detained individuals within the D.C. Jail with charges pending in the U.S. District Court for the District of Columbia or in other local and federal courts in this metropolitan area⁷;
6. The CARES Act permits the Chief Judge of the federal district court covered by the Judicial Conference finding, CARES Act, Div. B, Title V, § 15002(b)(1), to authorize, “on motion of” the Chief Judge, the use of video teleconferencing, or telephone conferencing if video

³ *How Coronavirus Spreads*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html> (last visited Mar. 29, 2020).

⁴ *Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html> (last visited Mar. 29, 2020).

⁵ *Governor Northam Orders Statewide Closure of Certain Non-Essential Businesses, K-12 Schools*, OFFICE OF THE GOVERNOR OF VIRGINIA, <https://www.governor.virginia.gov/newsroom/all-releases/2020/march/headline-855292-en.html> (last visited Mar. 29, 2020).

⁶ *Coronavirus Disease 2019 (COVID-19) Frequently Asked Questions*, MARYLAND DEPARTMENT OF HEALTH, https://phpa.health.maryland.gov/Documents/coronavirus_FAQ.pdf (last visited Mar. 29, 2020).

⁷ *2 More Inmates in D.C. Jail Test Positive for COVID-19*, WJLA, <https://wjla.com/news/coronavirus/2-more-inmates-in-dc-jail-test-positive-for-covid-19> (last visited March 29, 2020).

teleconferencing is not reasonably available, in the following ten federal criminal proceedings, with the consent of the defendant after consultation with counsel, upon occurrence of the events set out in paragraphs 1 and 2, above: “(A) Detention hearings under section 3142 of title 18, United States Code[;] (B) Initial Appearances under Rule 5 of the Federal Rules of Criminal Procedure[;] (C) Preliminary hearings under Rule 5.1 of the Federal Rules of Criminal Procedure[;] (D) Waivers of indictment under Rule 7(b) of the Federal Rules of Criminal Procedure[;] (E) Arraignments under Rule 10 of the Federal Rules of Criminal Procedure[;] (F) Probation and supervised release revocation proceedings under Rule 32.1 of the Federal Rules of Criminal Procedure[;] (G) Pretrial release revocation proceedings under section 3148 of title 18, United States Code[;] (H) Appearances under Rule 40 of the Federal Rules of Criminal Procedure[;] (I) Misdemeanor pleas and sentencings as described in Rule 43(b)(2) of the Federal Rules of Criminal Procedure[;] (J) Proceedings under chapter 403 of title 18, United States Code (commonly known as the “Federal Juvenile Delinquency Act”), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings,” *id.*⁸;

7. The CARES Act further permits the Chief Judge of the federal district court covered by the Judicial Conference finding, *id.* § 15002(b)(2), to authorize, “on motion of” the Chief Judge, the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, 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, with the consent of the defendant after consultation with counsel, upon

⁸ Use of video teleconferencing, with the defendant’s consent, is already permitted for some of these federal criminal proceedings. *See, e.g.*, FED. R. CRIM. P. 5(f) (initial appearance), 10 (arraignment), 43(b)(2) (misdemeanor proceedings).

occurrence of the events set out in paragraphs 1 and 2, above, and the Chief Judge “specifically finds” that such felony pleas and sentencings “cannot be conducted in person without seriously jeopardizing public health and safety” and the presiding district judge “in a particular case finds for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice,” *id.*;

This Court therefore makes the following FINDINGS:

- (A) that 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; and further
- (B) that 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 thereby runs afoul of the recommendations of the CDC and other public health and government authorities, set out in paragraphs 3 and 4, above, particularly in light of the current need for isolation and quarantine of residents in the D.C. Jail, as described in paragraph 5, above, and thus cannot be conducted in person without seriously jeopardizing public health and safety.

ACCORDINGLY, IT IS HEREBY:

ORDERED that the District Judges of this Court are **AUTHORIZED** to use video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, with the consent of the defendant after consultation with counsel, for the following criminal proceedings:

- (A) Detention hearings under section 3142 of title 18, United States Code;

- (B) Initial Appearances under Rule 5 of the Federal Rules of Criminal Procedure;
- (C) Preliminary hearings under Rule 5.1 of the Federal Rules of Criminal Procedure;
- (D) Waivers of indictment under Rule 7(b) of the Federal Rules of Criminal Procedure;
- (E) Arraignments under Rule 10 of the Federal Rules of Criminal Procedure;
- (F) Probation and supervised release revocation proceedings under Rule 32.1 of the Federal Rules of Criminal Procedure;
- (G) Pretrial release revocation proceedings under section 3148 of title 18, United States Code;
- (H) Appearances under Rule 40 of the Federal Rules of Criminal Procedure;
- (I) Misdemeanor pleas and sentencings as described in Rule 43(b)(2) of the Federal Rules of Criminal Procedure;
- (J) Proceedings under chapter 403 of title 18, United States Code (commonly known as the “Federal Juvenile Delinquency Act”), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings; it is further

ORDERED that the District Judges of this Court are **AUTHORIZED** to conduct felony pleas under Rule 11 of the Federal Rules of Criminal Procedure, felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure, and equivalent plea, sentencing, or disposition proceedings under chapter 403 of title 18, United States Code (commonly known as the “Federal Juvenile Delinquency Act”), by video teleconference, or by telephone conference if video teleconferencing is not reasonably available, with the consent of the defendant or juvenile after consultation with counsel, if, in a particular case, the District Judge finds for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice; it is further

ORDERED that the authorization for use of video teleconferencing or telephone conferencing under this Standing Order shall be reviewed by the Chief Judge every 90 days to determine whether this authorization is still warranted or whether extension of the authorization is necessary; and it is further

ORDERED that the authorization for use of video teleconferencing or telephone conferencing under this Standing Order shall remain in effect until the earliest of the following:

- (A) 30 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.

SO ORDERED.

Date: March 29, 2020



Beryl A. Howell

BERYL A. HOWELL
Chief Judge