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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: FIFTH EXTENSION OF
POSTPONED JURY TRIALS DUE TO
ONGOING EXIGENT CIRCUMSTANCES
CAUSED BY COVID-19 PANDEMIC

Standing Order No. 20-89 (BAH)

Chief Judge Beryl A. Howell

ORDER

By prior Standing Order 20-68, all civil and criminal petit jury selections and trials in this Court were previously postponed and continued through November 9, 2020, based upon consideration of circumstances relating to the Coronavirus Disease 2019 (COVID-19) pandemic, including the circumstances detailed in prior Standing Orders issued March 16, April 2, May 26, July 9, and August 10, 2020,¹ and the factors set out in this Court's Continuity of Operations Plan during the COVID-19 Pandemic (D.D.C. COOP Plan), issued July 15, 2020.²

Upon consideration of the following circumstances, in addition to those referenced in prior Standing Orders, the Court finds that a further general postponement of civil and criminal petit jury trials, with only limited exceptions, is necessary:

¹ See *In Re: Court Operations in Exigent Circumstances Created by the COVID-19 Pandemic*, Standing Order No. 20-9 (BAH) (March 16, 2020), ¶¶ (a)–(f); *In Re: Extension of Postponed Court Proceedings in Standing Order 20-9 and Limiting Court Operations in Exigent Circumstances Created by the COVID-19 Pandemic*, Standing Order No. 20-19 (BAH) (April 2, 2020), ¶¶ (g)–(i); *In Re Further Extension of Postponed Court Proceedings in Standing Order 20-9 and Limiting Court Operations in Exigent Circumstances Created by the COVID-19 Pandemic*, Standing Order No. 20-29 (BAH) (May 26, 2020), ¶¶ (j)–(l); *In Re: Third Further Extension of Postponed Court Proceedings Due to Ongoing Exigent Circumstances Caused by COVID-19 Pandemic*, Standing Order No. 20-62 (BAH) (July 9, 2020), ¶¶ (a)–(c); and *In Re: Fourth Further Extension of Postponed Court Proceedings Due to Ongoing Exigent Circumstances*, Standing Order No. 20-68 (BAH) (August 10, 2020), ¶¶ (a)–(d).

² The District Court for the District of Columbia's COOP Plan is available at: http://www.dcd.uscourts.gov/sites/dcd/files/FINAL%20PUBLIC_Continuity%20of%20Operations%20Plan%20for%20COVID-19%20Pandemic%20%28With%20Appendices%29_20200715.pdf.

- (a) the District of Columbia remains in Phase Two of its reopening plan and has not identified a date upon which it intends to transition to Phase Three;³
- (b) the rates of COVID-19 cases have increased notably in the District of Columbia and contiguous jurisdictions in the last three months, resulting in continuing community restrictions;⁴
- (c) on September 14, 2020, this Court entered Phase Two of its COOP Plan, during which only “urgent” criminal trials should be permitted and gatherings are restricted to no more than 50 people;
- (d) both the United States Attorney’s Office for the District of Columbia and the Federal Public Defender for the District of Columbia have been consulted and have urged caution in the resumption of jury trials due to the ongoing impact of the COVID-19 pandemic in this

³ See Mayor’s Order 2020-103, *Extensions of Public Emergency and Public Health Emergency and Additional Measures in Phase Two of Washington D.C. Reopening* (October 7, 2020), http://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/Mayor%27s%20Order%202020-103%20%2010-7-2020%20%281%29.pdf; *Phase Two*, GOVERNMENT OF THE DISTRICT OF COLUMBIA, <http://coronavirus.dc.gov/phasetwo> (last visited Nov. 5, 2020).

⁴ As of August 10, 2020, the 7-day average for new COVID-19 cases in the District of Columbia was 71; on November 4, 2020, it was 90, the highest it had been since June 4, 2020. Over the last two weeks, the 7-day average of new COVID-19 cases in the District of Columbia has increased 73% (rising from 52 on October 21, 2020 to 90 on November 4, 2020). See *COVID-19 Surveillance*, GOVERNMENT OF THE DISTRICT OF COLUMBIA, <http://coronavirus.dc.gov/data> (last visited Nov. 5, 2020). In response to rising rates, the District of Columbia has recently, *inter alia*, extended the declaration of a public emergency and public health emergency through December 31, 2020, see Mayor’s Order 2020-103, *Extensions of Public Emergency and Public Health Emergency and Additional Measures in Phase Two of Washington D.C. Reopening*, maintained its quarantine rules, see Mayor’s Order 2020-081, *Requirement to Self-Quarantine After Non-Essential Travel During the COVID-19 Public Health Emergency* (July 24, 2020), <http://coronavirus.dc.gov/page/mayor%E2%80%99s-order-2020-081-requirement-self-quarantine-after-non-essential-travel-during-covid-19>, and reversed its earlier decision to open the public schools for limited in-person schooling in November 2020, see Perry Stein, *D.C. Public Schools Cancels Plan to Bring Some Students into Classrooms Nov. 9*, WASH. POST (Nov. 2, 2020), http://www.washingtonpost.com/local/education/dc-teachers-protest-school-reopening/2020/11/02/2fb57c14-1d03-11eb-ba21-f2f001f0554b_story.html. The 7-day averages of new COVID-19 cases in Maryland and Virginia have similarly increased over the last two weeks, with Maryland experiencing a 47% rise in new cases and Virginia a 27% increase. See *Maryland Covid Map and Case Count*, N.Y. TIMES, <http://www.nytimes.com/interactive/2020/us/maryland-coronavirus-cases.html> (last visited Nov. 5, 2020); *Maryland COVID-19 Data Dashboard*, MD. DEP’T OF HEALTH, <http://coronavirus.maryland.gov> (last visited Nov. 5, 2020); *Virginia Covid Map and Case Count*, N.Y. TIMES, <http://www.nytimes.com/interactive/2020/us/virginia-coronavirus-cases.html> (last visited Nov. 5, 2020); *COVID-19 in Virginia: Cases*, VA. DEP’T OF HEALTH, <http://www.vdh.virginia.gov/coronavirus/coronavirus/covid-19-in-virginia-cases/> (last visited Nov. 5, 2020).

metropolitan area, including on prospective jurors, as well as concerns raised by increasing COVID-19 virus rates for the health and safety of all trial participants; and

- (e) the significant steps this Court has taken over the last seven months, in consultation with medical and air flow dynamics experts, to prepare for the resumption of jury trials and to protect the health and well-being of trial participants and courthouse staff and visitors, including imposing social distancing and masking requirements; installing temperature kiosks at entrances to the courthouse and requiring their use; installing signage directing and limiting traffic flow in public hallways, elevators and restrooms; monitoring airflow and upgrading air filters in the courthouse; and reconfiguring courtrooms to include designated, socially-distant seating, plexiglass barriers, and special communication systems to allow attorneys to communicate with their clients privately while maintaining physical distance.

See D.D.C. COOP Plan, App. 8.

Accordingly, it is hereby **ORDERED** that the provisions of Standing Order 20-68 are superseded in the following respects:

- (1) **Jury Selections and Trials**. Subject to the limited exception in paragraph (3) below, all civil and criminal petit jury selections and jury trials scheduled to commence before **January 11, 2021** are POSTPONED and CONTINUED pending further Order of the Court. The scheduling of criminal trials will be given precedence in the scheduling of jury trials to take place on or after January 11, 2021.
- (2) **Speedy Trial Act Exclusion For Postponed Criminal Trials**. In Standing Orders 20-9, 20-19, 20-29, 20-62 and 20-68 this Court found that due to the exigent circumstances created by the COVID-19 pandemic, the time period from **March 17, 2020 through November 9, 2020** 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 the failure to postpone jury trials until at least **January 11, 2021** would likely make continuation of the case impossible or result in a miscarriage of justice, *see* 18 U.S.C. § 3161(h)(7)(B)(i), the Court now finds that the additional time period from **November 9, 2020 through January 11, 2021** 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 the 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) **Limited Exception**. Notwithstanding paragraphs (1) and (2) above, a limited number of criminal jury trials may be permitted to take place before January 11, 2021, subject to stringent restrictions to protect the health and safety of trial participants and courthouse staff and visitors. Such trials are anticipated to provide valuable experience that will allow the Court to refine further its plans for the broader resumption of trials when circumstances permit. The only criminal petit jury selections and jury trials that may be scheduled prior to January 11, 2021 are ones that: (1) involve a single defendant, who requests or consents to proceed to trial during this period; (2) require a limited number of witnesses with very few, if any, non-law enforcement witnesses or witnesses who must travel from outside the D.C. metropolitan area to testify; and (3) have an expected duration of less than two weeks, including jury selection. No more than one trial may be scheduled or ongoing during any week. Preference in scheduling will be given to cases involving a defendant who is detained. While the pandemic persists, all civil and

criminal petit jury selections and jury trials will be conducted in accordance with the “Plan for Resumption of Jury Trials,” D.D.C. COOP Plan, Appendix 8.

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

SO ORDERED.

Date: November 6, 2020



Beryl A. Howell

BERYL A. HOWELL
Chief Judge