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

Standing Order No. 20-93 (BAH)

Chief Judge Beryl A. Howell

ORDER

By Standing Orders 20-89 and 20-91, all civil and criminal petit jury selections and trials in this Court were previously postponed and continued through January 11, 2020, based upon consideration of circumstances relating to the Coronavirus Disease 2019 (COVID-19) pandemic, including the circumstances detailed in prior Standing Orders¹ and the factors set out in this Court's Continuity of Operations Plan during the COVID-19 Pandemic ("COOP Plan"), issued July 15, 2020.²

Upon consideration of the circumstances referenced in prior Standing Orders, which circumstances are fully incorporated herein, and the additional circumstances set out below, the Court has determined that a further general postponement of civil and criminal petit jury trials 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) (Apr. 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); *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); *In Re: Fifth Extension of Postponed Jury Trials Due to Ongoing Exigent Circumstances Caused by COVID-19 Pandemic*, Standing Order No. 20-89 (BAH) (Nov. 6, 2020); *In Re: Adjustment to Fifth Extension of Postponed Jury Trials Due to Ongoing Exigent Circumstances Caused by COVID-19 Pandemic and Temporary Suspension of Authority to Administer the Oath of Allegiance to New Citizens*, Standing Order No. 20-91 (BAH) (Nov. 24, 2020).

² The Court's COOP Plan is available at U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, *Continuity of Operations Plan during the COVID-19 Pandemic (with appendices)*, July 15, 2020, <https://www.uscourts.gov/sites/dcd/files/Continuity%20of%20Operations%20Plan%20with%20Appendix%20for%20External.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) Over the nearly six months since the District of Columbia entered Phase Two on June 22, 2020, COVID-19 case counts in D.C. have fluctuated. In recent weeks, case numbers have been surging upward, and they now are at significantly higher levels than in June. On June 22, 2020, the 7-day average of new cases was 37; on September 20, 2020 it was 52; and on December 15, 2020, the 7-day average of new cases was 250.⁴ Over the last two weeks in the District, the number of new cases has increased by 37% and the number of deaths by 58%.⁵ The recent surge of cases has prompted the Mayor of the District of Columbia to further tighten community restrictions on November 23, 2020, explaining in Mayor's Order 2020-119 issued the same day:

Community transmission of COVID-19 is escalating throughout the District and is exploding in many parts of the country. Reinforcement to encourage community responsibility and compliance with health and safety rules is necessary. Flu season, holiday gatherings, and greater indoor activity during winter are anticipated to cause even more cases of COVID-19 and increased stress on our hospital system's capacity. Immediate further action on the part of our residents, employers, and visitors, and further restrictions on activities that are conducive to the rapid spread of the disease are warranted.⁶

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 *Washington, D.C. Coronavirus Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/washington-dc-coronavirus-cases.html> (last visited Dec. 16, 2020); see also *COVID-19 Surveillance*, OFFICE OF THE MAYOR OF THE DISTRICT OF COLUMBIA, <https://coronavirus.dc.gov/data> (last visited Dec. 16, 2020).

⁵ *Id.*

⁶ Mayor's Order 2020-119, *Modified Requirements to Combat Escalation of COVID-19 Pandemic During Phase Two* (Nov. 23, 2020), https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/Mayor%27s%20Order%202020-119%20%2011-23-2020.pdf.

- (c) Pursuant to the Mayor's Order 2020-119, the allowable limit for outdoor gatherings was reduced from 50 to 25 people, and the allowable size of most indoor gatherings was reduced from 25 people to 10.⁷ The maximum indoor capacity of restaurants was reduced from 50% to 25%.⁸ Indoor gyms and recreation centers have been ordered to suspend many activities.⁹
- (d) Other jurisdictions within the D.C. metropolitan area also have increased restrictions to combat the recent surge in COVID-19 cases. The State of Maryland, which had moved to its third stage of recovery and loosened some community restrictions on September 1, 2020,¹⁰ reversed course on November 17, 2020, returning restrictions to phase two levels.¹¹ On December 10, 2020, the Governor of Virginia announced new restrictions for that state, including a modified stay-at-home order, a universal mask requirement, and a reduction in the size of allowable social gatherings from 25 to 10.¹²
- (e) Although multiple COVID-19 vaccines are in development, public health officials have advised that initially insufficient doses will be available for all adults, though supplies will increase over time.¹³ On December 11, 2020, the United States Food and Drug Administration issued an Emergency Use Authorization for a COVID-19 vaccine developed

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*; see also Mayor's Order 2020-075, *Phase Two of Washington, DC Reopening* (June 19, 2020), https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/Mayors-Order-2020-075-06-19-20.pdf.

¹⁰ *Governor Hogan Announces Beginning of Stage Three of Maryland's COVID-19 Recovery, Additional Safe and Gradual Reopenings*, OFFICE OF THE GOVERNOR OF MARYLAND, <https://governor.maryland.gov/2020/09/01/governor-hogan-announces-beginning-of-stage-three-of-marylands-covid-19-recovery-additional-safe-and-gradual-reopenings/> (last visited Dec. 16, 2020).

¹¹ See, e.g., *To Fight COVID-19 Surge, Governor Hogan Announces Hospital Surge Measures, Statewide Capacity Restrictions*, OFFICE OF THE GOVERNOR OF MARYLAND, <https://governor.maryland.gov/2020/11/17/to-fight-covid-19-surge-governor-hogan-announces-hospital-surge-measures-statewide-capacity-restrictions/> (last visited Dec. 16, 2020) (reducing indoor dining and retail capacity, restricting hospital and nursing home visitation, and discouraging elective medical procedures).

¹² *Governor Northam Announces New Mitigation Measures to Slow COVID-19 Spread*, VIRGINIA GOVERNOR (Dec. 10, 2020), <https://www.governor.virginia.gov/newsroom/all-releases/2020/december/headline-886185-en.html>.

¹³ *Frequently Asked Questions About COVID-19 Vaccination*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Dec. 13, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/faq.html>.

by Pfizer-BioNTech.¹⁴ Distribution of that vaccine has just begun. Pursuant to the District of Columbia's vaccination plan, the vaccination of D.C. residents and workforce will be conducted in phases, with vaccination of the highest priority persons in Phase 1-A beginning this week.¹⁵ In Phase 1-B, other people who hold key roles in the essential functioning of society will be vaccinated, including law enforcement personnel, grocery workers, school teachers and staff, and people at increased risk or advanced age.¹⁶ The District of Columbia estimates the number of eligible people in Phase 1-A to be 85,000 and in Phase 1-B to be 310,000.¹⁷ The speed with which the District is able to vaccinate these priority categories first and then others is dependent upon vaccine allotments received. The first vaccine allotment for D.C. was 6,825 doses and is being administered to frontline health care workers and first responders in Phase 1-A.¹⁸ The size of subsequent allotments is unclear, and experts have predicted that vaccination against COVID-19 may not be widely available to persons in other phases of the vaccination plan or to the general public until later in 2021.¹⁹

Accordingly, in light of the worsening state of the COVID-19 pandemic in this area, it is hereby **ORDERED** that the provisions of Standing Orders 20-89 and 20-91 are superseded in the following respects:

¹⁴ *How CDC Is Making COVID-19 Vaccine Recommendations*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Dec. 13, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations-process.html>.

¹⁵ See DISTRICT OF COLUMBIA, COVID-19 VACCINATION PLAN 24 (Nov. 27, 2020), https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/DC_COVID-19%20Vaccination%20Plan%2011.27.pdf.

¹⁶ *Id.*

¹⁷ *Id.* at 25.

¹⁸ DISTRICT OF COLUMBIA HEALTH, CORONAVIRUS (COVID-19) SITUATIONAL UPDATE 8 (Dec. 14, 2020), https://mayor.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/Situational-Update-Presentation-12-14-20.pdf.

¹⁹ *Frequently Asked Questions About COVID-19 Vaccination*, *supra* note 13.

- (1) **Jury Selections and Trials.** All civil and criminal petit jury selections and jury trials scheduled to commence before **March 15, 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 March 15, 2021.

- (2) **Speedy Trial Act Exclusion For Postponed Criminal Trials.** In Standing Orders 20-9, 20-19, 20-29, 20-62, 20-68 and 20-89, this Court found that due to the exigent circumstances created by the COVID-19 pandemic, the time period from **March 17, 2020 through January 11, 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 **March 15, 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 **January 11, 2021 through March 15, 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) **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: December 17, 2020



Beryl A. Howell

BERYL A. HOWELL
Chief Judge