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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: 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)

Chief Judge Beryl A. Howell

ORDER

Since the national emergency relating to the COVID-19 pandemic was first declared on March 13, 2020, over 17 months ago, this Court has remained open and operating, with adjustments based on local health and safety conditions relating to the pandemic. Notwithstanding the challenges that necessary health and safety protocols have created, with concomitant limitations on the numbers of jury trials, the business of this Court has otherwise continued unabated. Indeed, during the first 17 months of the pandemic, this Court held over 4,500 criminal proceedings and 1,200 civil proceedings, mostly remotely using videoconferencing and teleconferencing technologies, with audio call-in lines providing public access. Since criminal and civil trials resumed on March 15, 2021 and June 1, 2021, respectively, after being suspended on March 17, 2020, the Court has held six criminal trials and seven civil trials, including bench trials. The number of civil cases resolved in the first 17 months of the pandemic markedly exceeds the number terminated in each of the two preceding 17-month periods.¹ Criminal cases have also continued to be resolved on as expeditious basis as possible, with the number of criminal

¹ The number of civil cases terminated during the first 17 months of the pandemic, from March 13, 2020 to August 13, 2021, was 5,146, as compared to the number of civil cases terminated in the two preceding 17-month periods, with 4,773 civil cases terminated from October 12, 2018 to March 12, 2020, and 3,810 civil cases terminated from May 11, 2017 to October 11, 2018.

defendants sentenced in the first 17 months of the pandemic only slightly less than in the preceding 17-month period but more than the number sentenced in the 17-month period before that.² The number of criminal cases filed increased notably during the pandemic, due largely to the number of criminal cases arising out of the events on January 6, 2021 at the United States Capitol.³ The number of sealed criminal investigative applications requiring judicial consideration and decision has also increased during the first 17 months of the pandemic, with this Court resolving over 8,670 such applications, as compared to 6,460 and 5,510 in the two preceding 17-month periods, respectively.

As this overview of the ongoing work makes clear, this Court has remained open, operating and busy after March 13, 2020, when public access to the E. Barrett Prettyman United States Courthouse and the William B. Bryant Annex (the “Courthouse”) was restricted to judges, staff, and those with official business before the courts.⁴ Proceedings before the criminal duty Magistrate Judges have continued uninterrupted throughout the pandemic.⁵ Although the public counters of the Clerk’s Office have remained closed, the Clerk’s Office has continued to manage the work of the Court throughout the pandemic.⁶ Grand jury sessions were initially suspended in March 2020, but resumed in June 2020 and have continued on a regular basis since then, with nine new grand juries impaneled during the

² During the first 17 months of the pandemic, from March 13, 2020 to August 13, 2021, this Court conducted 368 sentencing hearings, which was fewer than those conducted in the 17 months immediately preceding the pandemic, with 569 sentencing hearings held from October 12, 2018 to March 12, 2020, but greater than the number conducted during the 17 month period before that, with 342 sentencing hearings held from May 11, 2017 to October 11, 2018. Similarly, the number of plea hearings conducted in the first 17 months of the pandemic was 300, which was fewer than the 427 in the preceding 17 months, but greater than the 269 in the 17-month period before that.

³ During the first 17 months of the pandemic, from March 13, 2020 to August 13, 2021, 731 criminal cases were filed, as compared to 585 and 465 in the two preceding 17-month periods, respectively.

⁴ See *In Re: Restrictions on Courthouse Visitors*, Standing Order No. 20-8 (BAH) (Mar. 13, 2020).

⁵ See *In Re: Court Operations in Exigent Circumstances Created by the COVID-19 Pandemic*, Standing Order No. 20-9 (BAH) (Mar. 16, 2020) [hereinafter Standing Order 20-9].

⁶ See *id.*; *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) [hereinafter Standing Order 20-19]; *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) [hereinafter Standing Order 20-29]; *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) [hereinafter Standing Order 20-62].

pandemic.⁷ Both in-person proceedings and jury trials were generally suspended at the outset of the pandemic,⁸ but in-person proceedings resumed as necessary in September 2020,⁹ criminal trials in March 2021 and civil trials in June 2021.¹⁰ Though public access to the Courthouse continues to be restricted, such access has been expanded gradually in recent months to allow increased opportunities for the public to view on-site video streams of trials and proceedings.¹¹

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 Disease 2019 (“COVID-19”) global pandemic,¹² which national emergency remains in effect.
- (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,”¹³ which finding remains in effect. The United States District Court for the District of Columbia is a district court covered by the Judicial Conference finding.

⁷ See Standing Order 20-9, *supra* note 5; *In Re: Partial Sequestration of Grand Juries 19-1, 19-5 and 20-1 for Purposes of Providing Lunch and Minimize Risk of Exposure to and Community Transmission of COVID-19*, Standing Order No. 20-55 (BAH) (June 30, 2020).

⁸ See Standing Order 20-9, *supra* note 5; Standing Order 20-19, *supra* note 6; Standing Order 20-29, *supra* note 6; Standing Order 20-62, *supra* note 6; *In Re: Fourth Further Extension of Postponed Court Proceedings Due to Ongoing Exigent Circumstances Caused by COVID-19 Pandemic*, Standing Order No. 20-68 (BAH) (Aug. 10, 2020) [hereinafter Standing Order 20-68].

⁹ See Standing Order 20-68, *supra* note 8.

¹⁰ 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).

¹¹ 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: Updated Access Restrictions and Masking Protocols During the COVID-19 Pandemic*, Standing Order No. 21-42 (BAH) (July 15, 2021).

¹² *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/>.

¹³ 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)–(2).

- (c) The District of Columbia remains under a public emergency due to the COVID-19 pandemic.¹⁴
- (d) This Court remains in Phase Two of its Continuity of Operations Plan during the COVID-19 Pandemic (“COOP Plan”), issued July 15, 2020.¹⁵ Phase Two of the COOP Plan permits “urgent” criminal trials with appropriate precautions and “necessary” in-person proceedings.
- (e) 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 early summer of 2021, daily case rates reached the lowest number in over a year, only to rise significantly in recent weeks due to widespread circulation of the Delta variant of the virus.¹⁶ On August 23, 2021, the 7-day average of new cases was 160, up dramatically from the 7-day average of new cases on July 13, 2021, which was 17.¹⁷ Over the last two weeks in the District, the average number of new cases has risen 28%.¹⁸
- (f) On July 27, 2021, the Centers for Disease Control and Prevention (CDC) issued updated public health recommendations for fully vaccinated individuals in light of the increased circulation of the Delta variant of the coronavirus within the United States.¹⁹ The CDC

¹⁴ See Mayor’s Order 2021-096, End of Public Health Emergency and Extension of Public Emergency (July 24, 2021), https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/Mayors-Order-2021-096.pdf.

¹⁵ 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.dcd.uscourts.gov/sites/dcd/files/Continuity%20of%20Operations%20Plan%20with%20Appendix%20for%20External.pdf>.

¹⁶ GOVERNMENT OF THE DISTRICT OF COLUMBIA, *Coronavirus (COVID-19) Situational Update 4–5* (Aug. 16, 2021), https://mayor.dc.gov/sites/default/files/dc/sites/mayormb/release_content/attachments/COVID-Situational-Update-Presentation_08-16-21.pdf.

¹⁷ *Tracking Coronavirus in Washington, D.C.*, N.Y. TIMES (last updated Aug. 24, 2021), <https://www.nytimes.com/interactive/2021/us/washington-district-of-columbia-covid-cases.html>; see also *COVID-19 Surveillance*, GOVERNMENT OF THE DISTRICT OF COLUMBIA, <https://coronavirus.dc.gov/data> (last visited Aug. 24, 2021).

¹⁸ *Tracking Coronavirus in Washington, D.C.*, *supra* note 17.

¹⁹ See *Interim Public Health Recommendations for Fully Vaccinated People*, CENTERS FOR DISEASE CONTROL AND PREVENTION (last updated Aug. 19, 2021) www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html.

added a recommendation that fully vaccinated individuals wear a mask in public indoor settings in areas with “substantial or high transmission.”²⁰ The CDC noted that “some infections do occur among fully vaccinated people” and that “[f]ully vaccinated people who do become infected with the Delta variant can transmit it to others,” concluding that “fully vaccinated people can further reduce their risk of becoming infected with the Delta variant and transmitting it to others by wearing a mask in public indoor settings in areas of substantial or high community transmission.”²¹

- (g) Currently, the rate of transmission in the District of Columbia is considered “high.”²² On July 29, 2021, District of Columbia Mayor Muriel Bowser reimposed an indoor mask mandate for all persons, regardless of vaccination status, effective July 31, 2021.²³
- (h) On July 30, 2021, a mask requirement was reinstated for all individuals, regardless of vaccination status, while in the public and non-public areas of the Courthouse.²⁴
- (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 recently been generally well contained due to protocols adopted and refined during the pandemic.²⁵ The risks of virus transmission

²⁰ *Id.*

²¹ *Id.*

²² *COVID Data Tracker: COVID-19 Integrated County View*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://covid.cdc.gov/covid-data-tracker/#county-view> (select “District of Columbia”) (last visited Aug. 24, 2021).

²³ Mayor’s Order 2021-097, *Resumption of Mask Requirements and Delegations of Authority to the Department of Health and the Office of the State Superintendent of Education* (July 29, 2021), https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/Mayors-Order-2021-097.pdf.

²⁴ *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).

²⁵ *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> (compiling statistics on the prevalence of COVID-19 within DOC) (last visited Aug. 24, 2021).

and further exposure from residents entering or re-entering the facility remain real, however. In recent days, several new detainees have tested positive for COVID-19 upon intake.

- (j) Local efforts to vaccinate the population against COVID-19 are proceeding. As of August 16, 2021, an estimated 56% of D.C. residents had been fully vaccinated, with an estimated 66.2% of residents being at least partially vaccinated.²⁶ 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 currently circulating, including the Delta variant.”²⁷ Accordingly, this Court has adopted a policy requiring all employees to be vaccinated, unless exempted for a medical reason or closely held religious belief.
- (k) 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.²⁸ 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. Since March 16, 2021, ten jury trials have been conducted safely in the Courthouse.
- (l) 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 detention, whether witnesses would be required to travel from out of town, and previously established trial dates.

²⁶ *Vaccination Data*, GOVERNMENT OF THE DISTRICT OF COLUMBIA (last updated Aug. 16, 2021), <https://coronavirus.dc.gov/data/vaccination>.

²⁷ *Key Things to Know About COVID-19 Vaccines*, CENTERS FOR DISEASE CONTROL AND PREVENTION (last updated Aug. 19, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html>.

²⁸ *See Continuity of Operations Plan for COVID-19 Pandemic*, U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, <https://www.dcd.uscourts.gov/continuity-operations-plan-covid-19-pandemic> (last visited Aug. 24, 2021).

(m) The need to conduct criminal trials in person means that the Court's ability to conduct other in-person proceedings safely is necessarily limited, both because of space constraints and because of the continuing need to limit the total numbers of people in the Courthouse to reduce the risk of transmission of the virus.

In light of the aforementioned circumstances, and in recognition of the need to continue a cautious and incremental approach toward the resumption of normal operations, with recognition of the recent worsening of the COVID-19 pandemic in this area due to the widespread circulation of the highly contagious Delta variant, it is hereby **ORDERED**:

1. **Continuation of Limited Capacity for Jury Trials.** This Court will continue to limit the number of jury trials that may be conducted at one time in the Courthouse until at least **October 31, 2021**. The need to maintain proper health and safety protocols, including social distancing, necessarily limits the Court's capacity to conduct trials. The Court anticipates that each criminal jury trial will require the use of multiple courtrooms, including the Ceremonial Courtroom for jury selections. Thus, no more than one criminal jury selection will take place on a given day, and no more than three criminal trials, with an effort to segregate the trials on separate floors, will take place within the Courthouse at one time during this period. The Court will prioritize trials with detained defendants and will schedule trials according to a master trial calendar. Criminal jury trials will take precedence over civil trials in scheduling.

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, and 21-10, this Court found that due to the exigent circumstances created by the COVID-19 pandemic, the time period from **March 17, 2020 through August 31, 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 described in paragraph (1) before **October 31, 2021**, 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 **August 31, 2021 through October 31, 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 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. **Extension of Videoconferencing Authorization for Certain Criminal Proceedings.** A sixth 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), is 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). The CARES Act requires that authorization for use of video teleconferencing or telephone conferencing be reviewed "on the date that is 90 days after the date on which [such] authorization . . . is issued," and every 90 days thereafter. CARES Act, Div. B, Title V § 15002(b)(3)(A)–(B). This Court's initial authorization was issued March 29, 2020, and five 90-day

extensions were issued subsequently, on June 26, 2020, September 23, 2020, December 17, 2020, March 16, 2021, and June 11, 2021.²⁹

In addition to the circumstances described above, the Court finds 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 may require the transport of detained individuals, who may be unvaccinated, from various jail facilities to the Courthouse within a confined vehicle space. Termination of the CARES Act authority for videoconferencing proceedings would require that almost all criminal proceedings, including felony pleas under Rule 11 and felony sentencings under Rule 32, be conducted in person. Such a requirement poses continued serious jeopardy to the public health and safety of in-court participants and others with whom they may have contact, given current circumstances.

Accordingly, an additional 90-day extension, from August 25, 2021 through November 23, 2021, is now authorized. The U.S. Attorney's Office for the District of Columbia and the Office of the Federal Public Defender for the District of Columbia support this extension of the authorization for use of video teleconferencing or telephone conferencing in criminal proceedings, subject, as required under the CARES Act, to consent of the defendant, after consultation with counsel.


²⁹ 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 30, 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).

4. **Reopening of Public Counters of Clerk's Office.** The public counters of the District and Bankruptcy Courts' Clerk's Office currently plan to reopen on **September 27, 2021**, at which time members of the public seeking to visit the public counters of the Clerk's Office shall be permitted to enter the Courthouse, subject to all applicable health and safety protocols. The public waiting area of the Clerk's Office has glass barriers separating the public space from the non-public areas, and masking and social distancing requirements are posted.

5. **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: August 25, 2021

 
BERYL A. HOWELL
Chief Judge