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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

IN RE: STATUS OF COURT OPERATIONS,
INCLUDING JURY TRIALS, AND SPEEDY
TRIAL ACT EXCLUSIONS IN LIGHT OF
CURRENT CIRCUMSTANCES RELATING
TO THE COVID-19 PANDEMIC

Standing Order No. 21-62 (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 19 months ago, this Court has remained open and operating, with adjustments based on local health and safety conditions relating to the pandemic. Both in-person proceedings and jury trials were generally suspended at the outset of the pandemic,¹ with in-person proceedings resuming as necessary in September 2020,² criminal trials resuming in March 2021, and civil trials in June 2021.³ The number of trials conducted at one time in the E. Barrett Prettyman United States Courthouse and the William B. Bryant Annex (the “Courthouse”) has been restricted in order to implement necessary health and safety protocols. Public access to the Courthouse, while initially restricted, has been expanded

¹ See *In Re: Court Operations in Exigent Circumstances Created by the COVID-19 Pandemic*, Standing Order 20-9 (BAH) (Mar. 16, 2020); *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); *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); *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); *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].

² See Standing Order 20-68, *supra* note 1.

³ 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).

gradually to permit the public and media to view proceedings, either live or via video streams, and to access the public counters of the Clerk's Office.⁴

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,⁵ which national emergency remains in effect. The Secretary of Health and Human Services has determined that a national public health emergency continues to exist.⁶
- (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,"⁷ 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.
- (c) The District of Columbia remains under a public emergency due to the COVID-19 pandemic.⁸

⁴ 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).

⁵ *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/>.

⁶ *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/COVID-15Oct21.aspx>.

⁷ Memorandum from James C. Duff, Director of the Administrative Office of the Courts, Update on CARES Act Provisions for Criminal Proceedings I (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).

⁸ See 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

- (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.⁹ That recent surge appears to be on the decline generally. As of October 25, 2021, the 7-day average of new cases in D.C. was 82, down from the recent peak of September 19, 2021, when the 7-day average of new cases was 269.¹⁰ Yet the current rate remains significantly higher than the lowest 7-day average of new cases of nine reported in July 2021.¹¹
- (e) The CDC continues to recommend that fully vaccinated individuals wear a mask in public indoor settings in areas with “substantial or high transmission.”¹² Individuals who have a medical condition or who are taking medications that weaken the immune system “should continue to take all precautions recommended for unvaccinated people” unless advised otherwise by a healthcare provider.¹³
- (f) The rate of transmission of COVID-19 in the District of Columbia is still considered “substantial.”¹⁴ On July 29, 2021, District of Columbia Mayor Muriel Bowser reimposed an

⁹ 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

¹⁰ *Tracking Coronavirus in Washington, D.C.*, N.Y. TIMES, <https://www.nytimes.com/interactive/2021/us/washington-district-of-columbia-covid-cases.html> (Nov. 1, 2021); *see also COVID-19 Surveillance*, GOVERNMENT OF THE DISTRICT OF COLUMBIA, <https://coronavirus.dc.gov/data> (Oct. 28, 2021).

¹¹ *Tracking Coronavirus in Washington, D.C.*, *supra* note 10.

¹² *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).

¹³ *Id.*

¹⁴ *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 Oct. 26, 2021).

indoor mask mandate for all persons, regardless of vaccination status, which order remains in effect.¹⁵

- (g) 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.¹⁶
- (h) 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.¹⁷ 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 remain a priority.
- (i) Local efforts to vaccinate the eligible D.C. population against COVID-19 are continuing. As of October 26, 2021, approximately 68% of eligible D.C. residents, and 59% of the total D.C. population, have been fully vaccinated.¹⁸ 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."¹⁹ Accordingly,

¹⁵ OFFICE OF THE MAYOR OF THE DISTRICT OF COLUMBIA, 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.

¹⁶ *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).

¹⁷ *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> (last visited Aug. 24, 2021).

¹⁸ *COVID-19 Integrated County View*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://covid.cdc.gov/covid-data-tracker/#county-view|District%20of%20Columbia|11001|Risk|community_transmission_level (last visited Nov. 1, 2021).

¹⁹ *Key Things to Know About COVID-19 Vaccines*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html> (Oct. 7, 2021).

this Court has adopted a policy requiring all employees to be vaccinated, unless exempted for a medical reason or closely held religious belief.

- (j) 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, which will be updated shortly.²⁰ 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, about fifteen jury trials and six bench trials have been conducted safely in the Courthouse.
- (k) 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.
- (l) 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, 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 a cautious and incremental approach toward the

²⁰ 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).

resumption of normal operations due to the continued 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 **December 15, 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 selection and trial will continue to require the use of multiple courtrooms. An effort to segregate ongoing trials to separate floors within the Courthouse during this period will continue. 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, 21-10, and 21-47 this Court found that due to the exigent circumstances created by the COVID-19 pandemic, the time period from **March 17, 2020 through October 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 **December 15, 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 December 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 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 21-47, this Court determined that 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), 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). As set forth in Standing Order 21-47, the authorization for video and telephone conferencing of certain criminal proceedings continues through **November 23, 2021**. 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 is warranted and will issue an order accordingly.

4. **Public Counters of Clerk's Office are Open.** The public counters of the District and Bankruptcy Courts' Clerk's Office officially reopened on **September 27, 2021**. Members of the public seeking to visit the public counters of the Clerk's Office are 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: November 1, 2021



Beryl A. Howell

BERYL A. HOWELL
Chief Judge