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

Standing Order No. 21-33 (BAH)

Chief Judge Beryl A. Howell

ORDER

A fifth 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 four 90-day extensions were issued subsequently, on June 26, 2020, September 23, 2020, December 17, 2020, and March 16, 2021.¹ A fifth 90-day extension is now authorized based on the **FINDINGS** set out below:

¹ 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 26, 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).

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 pandemic,² which national emergency remains in effect.

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,”³ which finding remains in effect.

3. 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.

4. The Centers for Disease Control and Prevention (“CDC”) and other public health authorities continue to advise taking precautions to reduce the possibility of exposure to COVID-19, particularly for those people who are not fully vaccinated or are immunocompromised. The CDC’s recent interim guidance notes that fully vaccinated people can “resume activities without wearing masks or physical distancing, except where required by federal, state, local, tribal, or territorial laws, rules and regulations, including local business and workplace guidance.”⁴ Social distancing and masking recommendations remain in place for those who have not been fully vaccinated or who are immunocompromised.⁵

² *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/>.

³ 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).

⁴ *Interim Public Health Recommendations for Fully Vaccinated People*, CENTERS FOR DISEASE CONTROL & PREVENTION (May 28, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>.

⁵ *When You’ve Been Fully Vaccinated*, CENTERS FOR DISEASE CONTROL & PREVENTION (May 16, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html> (“If you have a condition or are taking medications that weaken your immune system, you may NOT be fully protected even if you are fully vaccinated.”).

5. Since June 22, 2020, the District of Columbia has operated in the second phase of its COVID-19 recovery and reopening plan. In recent months, the situation in the District with respect to the COVID-19 pandemic has improved, but the need for continued caution remains. Over the year since the District of Columbia entered Phase Two, COVID-19 case counts in D.C. have fluctuated, and recently they have declined significantly. On March 16, 2021, the 7-day average of new cases per 100,000 people was 17; on June 9, 2021, it was 2, with a 38% decrease over the last two weeks.⁶ Approximately 48% of D.C. residents are now fully vaccinated, which remains below the percentage experts opine is necessary for “herd” immunity.⁷

6. On May 17, 2021, Mayor Bowser extended the ongoing public emergency and public health emergency, first declared on March 11, 2020, for “so long as District of Columbia law extends the emergency.”⁸ Her order noted that “[t]he District continues to assess the prevalence and impact of new, more transmissible SARS-Co-V-2 variants on the progress we have made through various public health measures, including the District’s vaccination program,” and that the “spread of COVID-19 remains a serious threat to individuals who are not vaccinated.”⁹ The order further noted that “[m]asks and physical distancing are still important tools for reducing risk for COVID-19 for unvaccinated persons, persons who are immunosuppressed, and persons

⁶ *Tracking Coronavirus in Washington, D.C.*, N.Y. TIMES (last updated June 10, 2021), <https://www.nytimes.com/interactive/2021/us/washington-district-of-columbia-covid-cases.html>.

⁷ See *Vaccination Data*, GOV’T OF THE DIST. OF COLUMBIA, <https://coronavirus.dc.gov/data/vaccination> (last visited June 10, 2021); See *How Vaccinations Are Going in Your County and State*, N.Y. TIMES <https://www.nytimes.com/interactive/2020/us/covid-19-vaccine-doses.html> (last visited June 10, 2021); Gypsyamber D’Souza & David Dowdy, *What is Herd Immunity and How Can We Achieve It With COVID-19?*, JOHNS HOPKINS BLOOMBERG SCH. OF PUB. HEALTH (last updated April 6, 2021), <https://www.jhsph.edu/covid-19/articles/achieving-herd-immunity-with-covid19.html> (“[W]e would need at least 70% of the population to be immune to keep the rate of infection down (‘achieve herd immunity’) without restrictions on activities.”).

⁸ *Mayor’s Order 2021-069: Modified Measures for Spring/Summer 2021 of Washington, DC Reopening and Extension of Public and Public Health Emergencies* § XII, GOV’T OF THE DIST. OF COLUMBIA (May 17, 2021), <https://coronavirus.dc.gov/page/mayors-order-mayor%E2%80%99s-order-2021-069-modified-measures-springsummer-2021-washington-dc-reopening>.

⁹ *Id.* §§ 1.3–4.

living and working in certain settings.”¹⁰ In recognition of the declining COVID-19 case rates, as well as the increased vaccination of D.C. residents and availability of vaccine, the District has lifted capacity limits on a wide range of businesses; however, institutions are permitted to require and enforce their own health protocols.¹¹

7. On May 28, 2021, Mayor Bowser issued updated guidance regarding face masks. Pursuant to this guidance, fully vaccinated people are no longer required to wear face masks in the District except in certain settings such as homeless shelters, correctional facilities, schools or healthcare facilities, or as required to by workplace or establishment policies.¹² The guidance emphasizes that for people who are not fully vaccinated, the wearing of a mask “does not take away the need for social distancing.”¹³

8. Transmission of the virus within the D.C. Department of Corrections’ (“DOC”) D.C. Jail, where many defendants detained pretrial on charges pending in this Court and in other local and federal courts in this metropolitan area, has been well contained, but DOC officials remain vigilant about the risks of transmission and further exposure from residents entering or re-entering the facility.¹⁴ Protocols currently in place at the D.C. Jail include requiring testing prior to a detained defendant’s in-person appearance in court and, upon return, residency for fourteen days in an enhanced monitoring unit within D.C. Jail.

¹⁰ *Id.* § 1.4.

¹¹ *Id.* §§ IV, X.

¹² See GOV’T OF THE DIST. OF COLUMBIA, CORONAVIRUS 2019 (COVID-19): MASKS AND CLOTH FACE COVERINGS GUIDANCE FOR THE GENERAL PUBLIC (May 28, 2021), https://coronavirus.dc.gov/sites/default/files/dc/sites/coronavirus/page_content/attachments/Masks_and_Cloth_Face_Coverings_DCHealth_COVID-19_Guidance_2021.5.28.pdf (masks and face coverings guidance for general public).

¹³ *Id.* at 2.

¹⁴ *Public Safety Agency COVID-19 Case Data*, GOV’T OF THE DIST. OF COLUMBIA, <https://coronavirus.dc.gov/page/public-safety-agency-covid-19-case-data> (compiling statistics on the prevalence of COVID-19 within the D.C. Department of Corrections) (last visited June 10, 2021).

9. This Court transitioned to Phase Two of its Continuity of Operations Plan for the COVID-19 Pandemic (“COOP Plan”) on September 14, 2020.¹⁵ Pursuant to the COOP Plan, during Phase Two, limited in-person court proceedings are permitted when the presiding Judge determines, upon request of a party, that an in-person appearance is “necessary.” *See* COOP Plan at 15, ¶ 4; *id.*, App. 7 ¶ 2. The number of individuals present in the courtroom for any in-court proceeding are kept to the minimum necessary with permission required from the presiding Judge for non-participants in the proceeding to be physically present. COOP Plan, App. 7 ¶ 5(d). For public health and safety reasons, the continued expectation is that most proceedings will be conducted remotely, via video or teleconference, with in-person proceedings subject to significant precautions. *See id.* ¶¶ 1, 3–9.

10. Pursuant to the COOP Plan, during Phase Two, “urgent” criminal trials are permitted, and this Court began a limited resumption of criminal jury trials as of March 15, 2021. Jury selections and trials are conducted in a manner that maintains strict health and safety protocols for the safety of all participants. *See* COOP Plan, App. 8. To ensure appropriate social distancing at all times, the number of trials currently allowed at any one time is limited to one per floor, with a maximum number of three in the courthouse, and multiple courtrooms are used for each trial. *Id.* ¶ 2(a).

11. 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 numbers of people in the courthouse.

¹⁵ *See* 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>. The Court’s COOP Plan and updated appendices are available at *Coronavirus (COVID-19) Response—Information and Announcements*, UNITED STATES DISTRICT COURT: DISTRICT OF COLUMBIA, <https://www.dcd.uscourts.gov/coronavirus-covid-19-response-information-and-announcements> (last visited June 10, 2021).

12. Public health guidance continues to emphasize physical distancing and masking for individuals who are not fully vaccinated or are immunocompromised, but the vaccination status of attorneys, jurors, members of the media and public, and others in the courthouse may not be known. Accordingly, health and safety protocols, including mask and social distancing requirements, remain in place in the public spaces of the courthouse and, subject to the presiding Judge's direction, in courtrooms.¹⁶ The need to maintain appropriate protocols, which include the use of multiple courtrooms for jury trials and the requirements of physical distancing, necessarily restricts the Court's ability to resume conducting all criminal proceedings in person.

13. 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.

14. Termination of the CARES Act authority for videoconferencing proceedings would require that 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 the circumstances as described above.

15. Both 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

¹⁶ See *In Re Modified Restrictions on Access to Courthouse During the COVID-19 Pandemic*, Standing Order No. 21-20 (BAH) (Apr. 2, 2021).

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.

It is therefore

ORDERED, based upon this Court's review of the current circumstances in this District, that the authorization for use of video teleconferencing or telephone conferencing under Standing Order No. 20-17 shall remain in effect until the earliest of the following:

(A) Thirty 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; and it is further

ORDERED that this Court shall review the authorization for use of video teleconferencing or telephone conferencing every 90 days to determine whether this authorization is still warranted or whether extension of the authorization is necessary.

SO ORDERED.

Date: June 11, 2021



Beryl A. Howell

BERYL A. HOWELL
Chief Judge