

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:
CORONAVIRUS/COVID-19 PANDEMIC

**ADMINISTRATIVE ORDER
NO. 2020-13-3**

THIRD AUTHORIZATION TO CONTINUE THE USE
OF VIDEOCONFERENCING OR TELEPHONE
CONFERENCING IN CRIMINAL MATTERS

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ROSLYNN R. MAUSKOPF, Chief Judge.

On March 13, 2020, the President of the United States issued a proclamation declaring a National Emergency in response to the Coronavirus Disease-2019 (“COVID-19”) pandemic pursuant to the National Emergencies Act (50 U.S.C. § 1601, *et seq.*).

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which authorized the Judicial Conference of the United States to provide authority to Chief District Judges to permit the conduct of certain criminal proceedings by video or audio conference. The President signed the CARES Act into law on March 27, 2020.

On March 29, 2020, the Judicial Conference of the United States made the appropriate findings as required under the CARES Act, finding specifically that “emergency conditions due to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. § 1601, *et seq.*) with respect to the Coronavirus Disease 2019 (COVID-19) have materially affected and will materially affect the functioning of the federal courts generally.”

On March 30, 2020, acting pursuant to § 15002(b) of the CARES Act and the authority granted by the Judicial Conference of the United States, this Court entered Administrative Order 2020-13, making certain findings and authorizing judges of this District to conduct proceedings remotely in accordance with the CARES Act.

On June 25, 2020, and again on September 21, 2020, and in light of the conditions then existing, this Court entered Administrative Orders 2020-13-1 and 2020-13-2 respectively, further authorizing judges of this District to conduct proceedings remotely in accordance with § 15002(b) of the CARES Act and the authority granted by the Judicial Conference of the United State, and acting pursuant to, this Court entered Administrative Order 2020-13-1 By law, Administrative Order 2020-13-2 will expire on December 25, 2020.

Pursuant to the CARES Act and Administrative Order 2020-13-2, I have reviewed the need to continue for a third time the authorization to conduct proceedings remotely. I find that

since the issuance of Administrative Order 2020-13-2, the public health crisis has caused, is causing, and is expected to continue to cause extraordinary disruption throughout this District, and to the functioning of the courts within this District. The COVID-19 pandemic has not yet abated, as the number of confirmed cases and the community-wide infection rate have risen significantly over the last several weeks. As of the date of this Order, there have been over 407,000 confirmed cases of COVID-19 in the counties comprising the Eastern District of New York, representing 48% of the approximately 848,000 confirmed cases in New York State.¹ Both New York State and New York City have imposed restrictions on activities that had resumed, and have from time-to-time imposed additional targeted restrictions on areas within this District where the infection rates have spiked. Pursuant to Administrative Orders 2020-26 and 2020-26-1, and for the reasons stated therein, this Court has suspended through January 19, 2021 in-person proceedings other than those criminal proceedings to which the defendant does not consent, with an extension of the suspension possible if this wave of new cases does not abate.

Confirmed cases of COVID-19 have also risen among detainees at the Metropolitan Detention Center in Brooklyn where the majority of the District's defendants are detained,² resulting in operational restrictions that are likely to continue, including quarantine and isolation of detainees, limitations on the movement of detainees within the facility and to and from court, and the suspension of legal and social visits. Judges, court staff, and attorneys, including those at the United States Attorney's Office for the Eastern District of New York and the Federal Defenders of New York, continue to work remotely. Many attorneys, defendants, members of the public, and others continue to limit their travel, and many are unable to come to the courthouse because they are at higher risk for contracting COVID-19. While the first allotments of COVID-19 vaccine are currently being distributed, the size and prioritization of subsequent allotments remain unclear, and experts have indicated that vaccination against COVID-19 may not be widely available to the general public until later in 2021.³

Based on these circumstances, among others, criminal proceedings cannot be conducted in person in this District without seriously jeopardizing the public health and safety of in-court participants and others with whom they may have contact. As such, it is necessary for the judges in this District to continue to conduct criminal proceedings remotely, by videoconference or teleconference.

The undersigned, as Chief Judge of this Court, hereby concludes, that it remains necessary to invoke the provisions of the CARES Act for an additional ninety (90) days, commencing on December 25, 2020, when the period authorized in Administrative Order 2020-13-2 expires.

¹ See *New York State Department of Health COVID-19 Tracker*, <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Map?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n> (last visited December 21, 2020). In addition, confirmed positive cases in the three counties of New York City that comprise a part of the Eastern District of New York account for 65% of the total number of confirmed positive cases in New York City. *Id.*

² See *Reports from the Bureau of Prisons Pursuant to Admin. Order 2020-14*, <https://www.nyed.uscourts.gov/covid-19> (last visited December 21, 2020).

³ See *Frequently Asked Questions About COVID-19 Vaccination*, Centers of Disease Control and Prevention (December 20, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/faq.html>.

Thus, pursuant to the authority granted under § 15002(b)(1) of the CARES Act, I hereby authorize judges in this District, with the consent of the defendant or the juvenile after consultation with counsel, to continue to use video conferencing, or telephone conferencing if video conferencing is not reasonably available for use, for the following events:

- (A) Detention hearings under section 3142 of title 18, United States Code.
- (B) Initial appearances under Rule 5 of the Federal Rules of Criminal Procedure.
- (C) Preliminary hearings under Rule 5.1 of the Federal Rules of Criminal Procedure.
- (D) Waivers of indictment under Rule 7(b) of the Federal Rules of Criminal Procedure.
- (E) Arraignments under Rule 10 of the Federal Rules of Criminal Procedure.
- (F) Probation and supervised release revocation proceedings under Rule 32.1 of the Federal Rules of Criminal Procedure.
- (G) Pretrial release revocation proceedings under section 3148 of title 18, United States Code.
- (H) Appearances under Rule 40 of the Federal Rules of Criminal Procedure.
- (I) Misdemeanor pleas and sentencings as described in Rule 43(b)(2) of the Federal Rules of Criminal Procedure.
- (J) Proceedings under chapter 403 of title 18, United States Code (commonly known as the “Federal Juvenile Delinquency Act”), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings.

Pursuant to § 15002(b)(2) of the CARES Act, I further specifically find that 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 cannot be conducted in person without seriously jeopardizing public health and safety. As a result, if judges in individual cases find, for specific reasons, that felony pleas or sentencings in those cases cannot be further delayed without serious harm to the interests of justice, judges may, with the consent of the defendant or the juvenile after consultation with counsel, conduct those proceedings by video conference, or by telephone conference if video conferencing is not reasonably available. This authority extends to equivalent plea, sentencing or disposition proceedings under 18 U.S.C. 403 (commonly referred to as the “Federal Juvenile Delinquency Act.”).

This authorization is effective for ninety (90) days, commencing on December 25, 2020, unless earlier terminated. If the emergency persists longer than ninety (90) days, I will review this authorization and determine whether to extend it pursuant to the provisions of the CARES Act. Notwithstanding the foregoing, pursuant to the provisions of the CARES Act, this authority shall terminate on the last day of the covered emergency period or the date on which the Judicial Conference of the United States finds that emergency conditions due to the national emergency declared by the President under the National Emergencies Act with respect to the COVID-19 virus outbreak no longer materially affect the functioning of either the Federal courts generally or the courts within this District.

SO ORDERED.

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Dated: Brooklyn, New York
December 21, 2020

ROSLYNN R. MAUSKOPF
Chief Judge