

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:
CORONAVIRUS/COVID-19 PANDEMIC

**ADMINISTRATIVE ORDER
NO. 2020-13-2**

SECOND 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, in light of the then current conditions, and 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 2020-13-1 further authorizing judges of this District to conduct proceedings remotely in accordance with the CARES Act. By law, Administrative Order 2020-13-1 will expire on September 25, 2020.

Pursuant to the CARES Act and Administrative Order 2020-13-1, I have reviewed the need to continue for a second time the authorization to conduct proceedings remotely. I find that emergency conditions due to the COVID-19 virus outbreak, and the need to protect public health

and safety, continue to materially affect the functioning of the courts within this District. While the Court has begun to conduct in-person proceedings, judges and court staff, as well as attorneys and staff 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 are unable to come to the courthouse because they are at high risk for contracting COVID-19. Mass transit continues to operate on reduced schedules, and concerns about its safe use persist. Large gatherings are still prohibited; occupancy of indoor spaces is limited to less than maximum capacity; and social distancing must be employed, all impacting the number and type of in-person proceedings that can be conducted safely within the courthouses of this District. A limited number of defendants housed at local detention facilities can be produced to the courthouse for in-person proceedings in any given day, due to quarantine and isolation requirements imposed by the Bureau of Prisons, and the need for the U.S. Marshals service to employ social distancing to safely transport to, and house defendants in, the courthouse. In-person attorney visits at these detention facilities are scheduled to resume soon, but with limitations. These conditions, among others, make it 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 September 26, 2020, when the period authorized in Administrative Order 2020-13-1 expires.

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 September 26, 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
September 21, 2020

ROSLYNN R. MAUSKOPF
Chief Judge