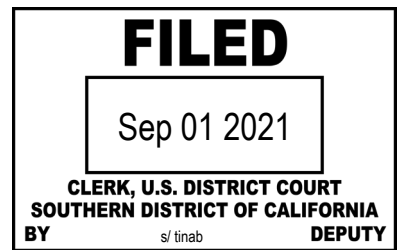


**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**



In the matter of)
)
CRIMINAL CASE PROCEEDINGS) **Order of the**
DURING THE COVID-19 PUBLIC) **Chief Judge No. 63-E**
EMERGENCY)
_____)

On July 27, 2021, Chief Judge Order (CJO) 63-D was issued and provided for the use of video teleconferencing, or telephone conferencing if video conferencing is not reasonably available, for certain criminal proceedings pursuant to the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”).

The Coronavirus Disease 2019 (“COVID-19”) outbreak is still considered to be a national emergency under the National Emergencies Act, 50 U.S.C. § 1601, *et seq.* The finding made by the Judicial Conference of the United States that “emergency conditions due to the national emergency declared by the President with respect to COVID-19 will materially affect the functioning of the federal courts generally” remains. Therefore, pursuant to § 15002(b)(1) of the CARES Act, the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, is authorized for the following proceedings:

- (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; and
- (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.

Video teleconferencing or telephone conferencing as authorized by this Order may only take place with the consent of the defendant, or the juvenile, after consultation with counsel. This consent may be obtained on the record at the time of the relevant event and need not be in writing.

Individual District and Magistrate Judges retain discretion, on a case by case basis, to schedule in-person criminal proceedings, and otherwise take such actions as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties. In doing so, judges must consider in each individual case whether convening an in-person hearing poses a serious threat to health and safety.

CJO 63-D also provided for felony plea and sentencing proceedings to be conducted in person. As of August 24, 2021, the County of San Diego reported a 7.8% positivity rate of COVID-19 cases. Although the positivity rate has increased since the time that CJO 63-D was issued, the vast majority of people who tested positive for COVID-19 were not fully vaccinated. Pursuant to CJO 59-A, the Court requires those who are not fully vaccinated to wear a mask inside the federal courthouses, and requires all visitors to follow the social distancing requirements posted throughout the facilities. Therefore, felony plea and sentencing proceedings will continue to be conducted in person.

Hearings in these matters for in-custody defendants will be set on Mondays, Wednesdays, and Fridays on the calendar of the assigned District Judge. District Judges may also schedule hearings in these matters for in-custody defendants who

are being held in the Metropolitan Correctional Center (MCC) on Tuesdays and Thursdays.

Felony plea proceedings for in-custody defendants will be set on Mondays, Wednesdays, and Fridays on the calendar of the assigned Magistrate Judge. Magistrate Judges may also schedule felony plea proceedings for in-custody defendants who are being held in the MCC on Tuesdays and Thursdays. Magistrate Judges may schedule felony plea proceedings for defendants who are out of custody on any day of the week.

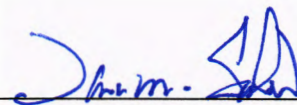
Attorneys who for health or other exceptional reasons are unable to appear in-person with their clients may request to appear telephonically or by videoconference with the presiding judge.

On its own motion, the Court finds that the period of suspension of criminal trials and other criminal proceedings due to the COVID-19 pandemic and related health and safety restrictions and requirements is excluded under the Speedy Trial Act. These restrictions and requirements include, but are not limited to, metered trials for in-custody defendants (i.e., no more than five in-custody defendants can proceed to trial during any one week), limited access to detainees, limited ability to safely transport and house detainees, and limited in-person proceedings due to ongoing quarantine requirements in detention facilities. Under 18 U.S.C. § 3161(h)(7)(A), the Court finds that this temporary suspension of in-person proceedings serves the ends of justice and outweighs the interests of the public, of the government, and of criminal defendants in a speedy trial. The period of exclusion will be in effect from the date of this Order until October 29, 2021, absent further order of the Court or that of any individual district judge. The Court may extend the period of exclusion as circumstances warrant. This Order does not toll any statutes of limitations or any statutory deadline for the filing of an appeal.

This Order will go into effect on September 3, 2021, and remain in place until further order of the Court.

IT IS SO ORDERED.

Dated: 9-1-21



DANA M. SABRAW
Chief United States District Judge