

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



COURT OPERATIONS AND ACCESS DURING
COVID-19 PANDEMIC AND

GENERAL ORDER NO. 148

VIDEO AND TELECONFERENCING FOR
CRIMINAL PROCEEDINGS UNDER THE
CARES ACT

WHEREAS, as of the date of this General Order and according to the Centers for Disease Control and Prevention, over 33 million people in the United States have contracted the Coronavirus Disease 2019 (“COVID-19”) and over 603,000 people in the United States have died;

WHEREAS, the Court has previously issued General Orders on March 12, 2020; March 13, 2020; March 16, 2020; March 18, 2020; March 19, 2020; March 20, 2020; March 27, 2020; March 30, 2020; April 17, 2020; April 23, 2020; May 13, 2020; June 15, 2020; June 26, 2020; July 15, 2020; September 23, 2020; December 8, 2020; February 24, 2021; April 23, 2021; and May 26, 2021, in response to the COVID-19 Pandemic Event, familiarity with which is assumed and the background information set forth within which is incorporated herein as though fully set forth;

Video and Teleconferencing for Certain Criminal Proceedings

WHEREAS, 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 use of video or audio conference to conduct certain criminal proceedings;

WHEREAS, on March 27, 2020, the President signed the CARES Act into law;

WHEREAS, 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 continue to exist due to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. § 1601, *et seq.*) with respect to COVID-19 and those

emergency conditions have materially affected and will materially affect the functioning of the federal courts generally;

WHEREAS, on March 30, 2020, the Court issued a General Order permitting the judges in this District to conduct certain criminal proceedings by videoconference, or, where videoconference is not reasonably available, by telephone, as set forth in the CARES Act, for a period of ninety (90) days, and that authorization has been subsequently extended by General Orders issued on June 26, 2020, September 23, 2020, December 8, 2020, February 24, 2021, and April 23, 2021;

WHEREAS, the April 23, 2021 General Order (General Order No. 146) authorization expires on July 14, 2021, and requires review of the situation to determine whether to extend the video and telephonic conferencing authority;

WHEREAS, while the number of positive cases of COVID-19, hospitalizations, and patients being treated in intensive care units have significantly decreased and the vaccines approved for emergency use by the United States Food and Drug Administration have been administered to millions of individuals, the circumstances concerning the COVID-19 Pandemic Event remain a grave concern in the Western District of New York and the United States due, in part, to new variants of the virus;

WHEREAS, many pre-trial detainees housed in local jail facilities by the United States Marshals Service remain unvaccinated;

WHEREAS, acting pursuant to Section 15002(b) of the CARES Act and the authority granted by the Judicial Conference of the United States, as Chief Judge, I find that emergency conditions continue to exist due to the COVID-19 Pandemic Event and that those conditions continue to materially affect the functioning of the courts within this District;

WHEREAS, pursuant to Section 15002(b)(2) of the CARES Act, as Chief Judge, 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 in all instances be conducted in person without seriously and unnecessarily jeopardizing public health and safety;

IT IS HEREBY ORDERED that, pursuant to the authority granted under Section 15002(b)(1) of the CARES Act, judges in this District, with the consent of the defendant or the juvenile after consultation with counsel, are authorized to use video conferencing, or telephonic 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; 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;

IT IS FURTHER ORDERED that if a judge in an individual case finds, for specific reasons, that felony pleas or sentencings in those cases cannot be further delayed without serious harm to the interests of justice and makes a determination on the record that it is in the best interest of the health and safety for all to conduct the proceeding remotely, the judge may, with the consent of the defendant or the juvenile after consultation with counsel to proceed remotely and waive personal appearance, conduct those proceedings by video conference, or by telephonic conference if video conferencing is not reasonably available. Under Section 15002(b)(2)(B) of the CARES Act, 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”);

IT IS FURTHER ORDERED that, pursuant to Section 15002(b)(3) of the CARES Act, and based upon the fact that the COVID-19 Pandemic Event continues, it has not been abated, and there continues to be concern about the magnitude of COVID-19 and, in particular, new variants of the virus, this authorization is effective through October 12, 2021, unless earlier terminated. If the emergency persists longer than October 12, 2021, I will review the situation for a possible extension of authority pursuant to the provisions of the CARES Act;

IT IS FURTHER ORDERED that, notwithstanding the foregoing, pursuant to Section 15002(b)(3) 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 Pandemic Event no longer materially affect the functioning of either the federal courts generally or the courts within this District;

Visitor Restrictions

IT IS FURTHER ORDERED that the following persons shall not enter any United States courthouse in the Western District of New York:

1. Persons asked or required by any doctor, hospital, health agency, or state to self-quarantine or isolate;
2. Persons who have been diagnosed with COVID-19 who are not fully recovered;
3. Unvaccinated persons who have had close contact—defined as personal contact between two or more unmasked persons for a period of 15 minutes or more—with anyone who has been diagnosed with COVID-19 in the preceding ten (10) days; or
4. Persons who are ill or who are suffering from a fever, cough, or shortness of breath;

IT IS FURTHER ORDERED that court security staff or the United States Marshals Service shall inquire of all persons seeking entry to any courthouse whether they meet any of the above criteria for restricting visitors, and if so, deny their entry;

IT IS FURTHER ORDERED that all visitors entering any courthouse must submit to a temperature scan to detect a fever and court security staff or the United States Marshals Service may deny entry to any person who registers a fever or who refuses to submit to such temperature scan;

IT IS FURTHER ORDERED that court security staff or the United States Marshals Service may also deny entry to any courthouse to any person considered a risk of carrying COVID-19;

IT IS FURTHER ORDERED that fully vaccinated individuals¹ entering any courthouse are not required to wear a mask or face covering in common areas of the courthouse;

IT IS FURTHER ORDERED that unvaccinated visitors to the Court, including vendors, contractors, litigants, attorneys, and other members of the public, shall be required to wear a

¹ Individuals are considered fully vaccinated two weeks after receiving a second dose in a two-dose series or two weeks after receiving a single-dose vaccine.

mask/face covering when in common areas of any courthouse. Masks/face coverings shall cover the nose and mouth and fit snugly against the sides without gaps. While medical masks and N-95 respirators meet these requirements, bandanas and “gators” do not;

IT IS FURTHER ORDERED that signs will be posted at the entrance of each courthouse notifying all visitors of the requirement for unvaccinated individuals to wear masks/face coverings while in common areas of the courthouse;

IT IS FURTHER ORDERED that court security staff or the United States Marshals Service shall inquire as to the vaccination status of all visitors;

IT IS FURTHER ORDERED that all visitors shall present a valid proof of vaccination upon entry to the courthouse. For New York residents, valid proof of vaccination is a CDC COVID-19 Vaccination Record Card or Excelsior Pass. For non-New York residents, valid proof of vaccination is a CDC COVID-19 Vaccination Record Card or a pass similar to the Excelsior Pass from their home state. Vaccinated individuals will be provided with a wristband upon entry into the courthouse that they shall wear while inside the courthouse. Individuals unwilling or unable to provide proof of vaccination or individuals who refuse to wear a wristband shall abide by the rules contained in this General Order applicable to unvaccinated persons;

IT IS FURTHER ORDERED that policies regarding masks/face coverings and social distancing in a courtroom, jury room, or chambers area shall be determined by the presiding judicial officer, provided, however, that unvaccinated individuals shall continue to wear appropriate masks/face coverings and social distance in all common areas of the courthouse;

IT IS FURTHER ORDERED that policies regarding masks/face coverings and social distancing within the internal space of an agency or court unit shall be determined by the agency or court unit occupying that space;

IT IS FURTHER ORDERED that any person who fails to abide by this Order may be removed from the courthouse by court security staff or the United States Marshals Service;

Naturalization Proceedings

IT IS FURTHER ORDERED that the Court hereby grants the office of the United States Citizenship and Immigration Services the authority to perform administrative naturalization ceremonies under 8 U.S.C. § 1421 until further action of the Court;

Public and Media Access to Proceedings

IT IS FURTHER ORDERED that civil and criminal hearings may be conducted on a videoconference line or, where one is not reasonably available, a toll-free teleconference line. That line will be available to members of the public and the media, to the extent practicable. A note will appear on each case's individual docket on PACER and dial-in instructions can be obtained by calling the judge's chambers directly. Further instructions can be found on the Court's website or by calling the Clerk's Office. Members of the public and media may listen to the proceedings but may not participate in them. Members of the public and media are strictly prohibited from recording or broadcasting any hearing, in whole or in part, in any fashion. *See* Local R. Civ. P. 83.5; Local R. Crim. P. 53. Failure to comply with the above restriction on recording or broadcasting may result in a contempt finding. Further restrictions are set forth on the Court's website and may change from time to time;

IT IS FURTHER ORDERED that the presiding judge has the final, discretionary authority to grant or deny any specific request to appear in person, and to limit the number of persons entering the courtroom;

Attorney Admissions

IT IS HEREBY ORDERED that, at the discretion of the judge performing the attorney admission, the judge may:

1. Waive the personal appearance by the applicant and sponsor when provided the necessary documents including a Certificate of Good Standing;

2. Perform the admission ceremonies through any available communication technology, such as but not limited to: video conferencing, teleconferencing, Skype or Facetime;
3. Reschedule the applicant's date of admission. This may include rescheduling of case deadlines to accommodate the new date of admission;

CJA Interim Voucher Payments

IT IS FURTHER ORDERED that, until further order of the Court, CJA Panel Attorneys may submit interim vouchers for compensation, without prior Court approval, so long as the voucher exceeds \$1,000 and is not submitted within two months of a prior interim voucher in the same criminal matter;

Courthouses Remain Open

IT IS FURTHER ORDERED that the Western District of New York courthouses remain open, subject to the limitations contained above;

IT IS FURTHER ORDERED that filings will continue to be processed in civil and criminal cases via the CM/ECF electronic system and by mail. Paper documents may be received in the drop box located just inside each courthouse;

Superseding of Previous General Orders

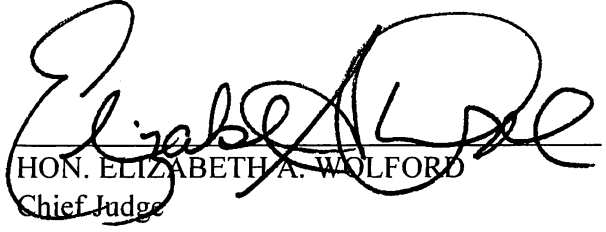
IT IS FURTHER ORDERED that this General Order supersedes this Court's General Orders issued on March 12, 2020; March 13, 2020; March 16, 2020; March 18, 2020; March 19, 2020; March 20, 2020; March 27, 2020; March 30, 2020; April 17, 2020; April 23, 2020; May 13, 2020; June 15, 2020; June 26, 2020; July 15, 2020; September 23, 2020; December 8, 2020; February 24, 2021; April 23, 2021; and May 26, 2021;

Termination of General Order

IT IS FURTHER ORDERED that this General Order shall remain in effect until further order of the Court, except that the provisions with respect to Video and Teleconferencing for criminal proceedings under the CARES Act shall be authorized until October 12, 2021, unless terminated earlier as set forth herein. The Court reserves the right to amend, modify, terminate, or extend this General Order at any time.

IT IS SO ORDERED.

Dated: July 14, 2021
Rochester, New York



HON. ELIZABETH A. WOLFORD
Chief Judge
United States District Court