

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

USDC DNJ DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>June 9, 2021</u>

IN RE: VIDEO CONFERENCING AND :
TELECONFERENCING FOR CRIMINAL : **EXTENSION OF**
PROCEEDINGS UNDER THE CARES ACT : **STANDING ORDER 2021-03**

WHEREAS, due to the continuing COVID-19 pandemic, the National Emergency, first declared on March 13, 2020, was continued by President Biden on February 24, 2021, for an unspecified period of up to one year, and the national public health emergency, first declared on January 31, 2020, was extended by the federal government on April 15, 2021, through July 20, 2021; and

WHEREAS, on March 27, 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), authorizing the use of video and telephone conferencing, under certain circumstances and with the consent of the defendant, for various criminal case events, during the course of the COVID-19 emergency, see The CARES Act, H.R. 748, pursuant to certain findings by the Judicial Conference of the United States; and

WHEREAS, on March 29, 2020, the Judicial Conference found that emergency conditions, consistent with the national emergency declared with respect to COVID-19, will materially affect the functioning of the federal courts (“Judicial Conference’s finding”), and the Judicial Conference has not terminated that finding; and

WHEREAS, as Chief Judge, I found, on March 30, 2020, June 28, 2020, September 23, 2020, December 17, 2020 and March 11, 2021, pursuant to Sections 15002(b)(1) and (b)(2) of the CARES Act, that criminal proceedings, and specifically, felony pleas and felony sentencings, could not be conducted in person without seriously jeopardizing public health and safety, and therefore entered Orders authorizing the use of video and telephone conferencing in criminal proceedings in conformance with the CARES Act (“the Court’s prior CARES Act Orders”); and

WHEREAS, pursuant to Section 15002(b)(3) of the CARES Act, this Court’s most recent authorization of the use of video and telephone conferencing in criminal proceedings, in accordance with the CARES Act, set forth in its March 11, 2021 Standing Order 2021-03, is due to be reviewed within 90 days thereof, or by June 9, 2021; and

WHEREAS, due to the continued caution warranted under the exigent circumstances of COVID-19, on May 19, 2021, this Court entered its Amended Extension of Standing Order 2021-02, limiting in-person judicial proceedings, in both criminal and civil matters, to those deemed to be necessary by the presiding judicial officer; and

WHEREAS, as of June 8, 2021, 61.8% of the population of the State of New Jersey has been vaccinated with one dose and 50.8% has been fully vaccinated against COVID-19, and the vaccination rates of the resident populations of the 21 counties that make up this judicial District,

and of detained individuals and detention center staff and necessary courtroom participants (including law enforcement officers), vary widely across this judicial District; and

WHEREAS, there is an on-going difficulty or inability due to medical privacy laws or otherwise to fully assess in advance whether any participant in an in-person proceeding is at an enhanced medical risk due to their specific circumstances and/or has received a COVID-19 vaccination; and

WHEREAS, as Chief Judge, I find, therefore, that there are still enhanced risks of in-person proceedings to defendants, the population of detention centers, and to court participants, as well as limited in-person meetings with legal counsel; and

WHEREAS, despite this Court's resumption of criminal jury trials as of June 1, 2021, pursuant to its Amended Standing Order 2021-04, for public health and safety reasons, a limited number of courtrooms with limited staffing will be utilized for an initial and continuing period of time so as to provide for the safe and sanitary conduct of proceedings, and therefore, for public health and safety reasons, including but not limited to such restrictions on courtroom usage and staffing protocols, to now require the conduct of only in-person proceedings during the period of time contemplated by this Order would inevitably work a material delay in the conduct of proceedings to which defendants would otherwise consent and would desire be conducted by video or telephone conferencing to preserve and advance the ends of justice in their specific case;

WHEREAS, the afore-mentioned national emergency declaration and the Judicial Conference's finding remain in effect; and

WHEREAS, I further find that the afore-mentioned enhanced risks and conditions are expected to exist for all or substantially all of the period of time covered by this Order, and that video and teleconference proceedings held pursuant to the Court's prior CARES Act Orders have been effective and have substantially furthered the ends of justice and have substantially avoided causing serious harm to the interests of justice, particularly as to the interests of the defendants who have consented to the same; and

WHEREAS, I, as Chief Judge, find, pursuant to Section 15002(b)(1) of the CARES Act, that due to the continuing effects of COVID-19, many criminal proceedings still cannot be conducted in person without seriously jeopardizing public health and safety, and that pursuant to Section 15002(b)(2) of the CARES Act, many felony pleas under Rule 11 of the Federal Rules of Criminal Procedure and many felony sentencing under Rule 32 of the Federal Rules of Criminal Procedure also cannot be conducted in person in this Court without seriously jeopardizing public health and safety; it is hereby

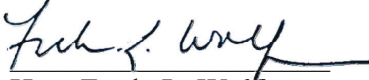
ORDERED, pursuant to Section 15002(b)(3) of the CARES Act, that the authorization in the Court's prior CARES Act Orders of the use of video and telephone conferencing in criminal proceedings is further extended for an additional 90 days from the date of this Order, unless this Order is terminated or vacated prior to such date according to the procedures set forth in the last paragraph of this Order; and it is further

ORDERED that, in lieu of personal appearance, and with the consent of the defendant after consultation with counsel, video conferencing, or telephone conferencing if video conferencing is not reasonably available, is continued to be authorized for all events listed in Section 15002(b) of the CARES Act, including the ten criminal proceedings enumerated in the Second Extension of Amended Standing Order 2020-06; and it is further

ORDERED that if a judge in an individual case finds, for specific reasons, that any felony plea or felony sentencing, or any equivalent plea and sentencing, as well as proceedings under the Federal Juvenile Delinquency Act, cannot be further delayed without serious harm to the interests of justice, then, with the consent of the defendant, or the juvenile, after consultation with counsel, the plea, sentencing or any equivalent proceeding, may be conducted by video conference, or by telephone conference if video conferencing is not reasonably available; and it is further

ORDERED that if, 90 days from the date of this Order, the emergency declaration remains in effect, along with the Judicial Conference's finding that the emergency conditions will materially affect the functioning of the federal courts, the Chief Judge shall review the authorization described in this Order and determine whether it shall be further extended. Pursuant to Section 15002(b)(3)(A) of the CARES Act, such review will occur at least once every 90 days, until the last day of the covered emergency period, or until the Chief Judge determines that the authorization is no longer warranted. Should the above-referenced emergency declaration or the Judicial Conference's finding terminate or be revoked prior to the expiration of 90 days from the date of this Order, then this Order may then be vacated according to law.

DATED: June 9, 2021


Hon. Freda L. Wolfson
U.S. Chief District Judge
District of New Jersey