

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:
CORONAVIRUS/COVID-19 PANDEMIC

**ADMINISTRATIVE ORDER
NO. 2020-26**

TEMPORARY SUSPENSION OF JURY TRIALS AND
GRAND JURY SELECTIONS, AND OTHER LIMITS
TO IN-PERSON PROCEEDINGS

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The COVID-19 pandemic has had and continues to have an extraordinary impact on the Eastern District of New York and the operations of this Court, as set forth below, as well as in prior Administrative Orders 2020-06; 2020-11; 2020-15; 2020-15-1; 2020-20-; and 2020-20-1, among others. Those Administrative Orders are hereby incorporated by reference, as are the previous findings set forth therein.

The Court continues to closely monitor the continuing public health emergency in and around this District, and nationwide. The Court has consistently been guided by the most recent information from the Centers for Disease Control and Prevention, state and local health authorities, and its own retained experts in epidemiology, and air flow dynamics related to the airborne transmission of viral contaminants. Since March of this year, the Court has tailored its operations to the changing circumstances of ongoing public health emergency as circumstances warrant, and implementing the most up-to-date guidance, in order to protect court employees, litigants, counsel, jurors, other court users, and members of the public.

The Court has also implemented extensive measures designed to mitigate the spread of COVID-19 within District courthouses and protect all persons who appear in Court, including limitations on persons allowed to enter courthouses; temperature and health screening on entry; strict enforcement of mask wearing and social distancing; limits on the number of court staff physically present as well as the size of in-person proceedings; reconfiguration of courtrooms to allow for sufficient distancing; installation of Plexiglas barriers and other safeguards throughout public and work spaces; limits on the number of trials that can be conducted simultaneously; and development of hearing and jury trial protocols that implement safe practices consistent with public health guidance, among others.

As local virus data improved, and consistent with guidance from public health authorities and the Court's experts, the Court gradually proceeded on a phased recovery plan and slowly increased its level of on-site operations at both the Brooklyn and Central Islip courthouses, including jury selections, jury and bench trials, hearings, grand jury selections and proceedings, and other necessary in-person proceedings. However, due to the continuing and significant risks posed by the ongoing public health emergency, a significant number of court proceedings continue

to be held remotely by teleconference and videoconference. *See* Administrative Order No. 2020-13-1 (“Authorization to Continue the Use of Videoconferencing in Criminal Matters”).

Those significant risks continue to this day both nationwide and locally. Indeed, conditions in this District and in the greater New York City metropolitan area have deteriorated over the last several weeks. Key indicators from health authorities in New York State, New York City, Nassau County and Suffolk County, as well as from those in neighboring New Jersey and Connecticut, demonstrate a significant increase in, and upward trajectory of, the rate of COVID-19 infections, including increases in positivity rates, the number of cases per 100,000 people, and hospitalization rates, among other metrics. These indicators reflect a troubling increase in community spread of the disease in and around this District. Public health experts, including the Court’s experts, have cautioned that these metrics tend to lag behind actual current conditions, suggesting that ongoing community spread is even greater than that reflected by available data. Importantly, the experts also warn that conditions are expected to further deteriorate over the next several weeks and months in light of colder weather, as well as anticipated holiday gatherings and travel. The Court’s epidemiologist has counseled that the 14-day period following the end of any holiday travel period poses a heightened risk of community spread, and that with the series of holidays occurring between now and New Year’s Day, in-person court proceedings, particularly those involving larger numbers of people, pose a significantly higher risk from now to mid-January 2021 for this reason alone.

The deteriorating conditions nationwide and locally have prompted New York government and public health officials to implement significant new restrictions within the past few weeks. All public schools in New York City have ceased in-person classes. Multiple micro-cluster zones with significantly higher infection rates have been identified within the District, requiring certain closures and other restrictions within those areas. Statewide, all bars, restaurants, and gyms must close from 10 p.m. to 5 a.m. daily, with restaurants permitted to provide delivery and curbside service after closing. A statewide quarantine is in effect for all persons traveling to New York from states outside of the New York metropolitan area, and those same restrictions apply to anyone seeking to enter the District’s courthouses. The size of indoor gatherings at private residences is limited to no more than 10 people, with other capacity limits in place tailored to the nature of the facility and activity. Additional micro-clusters have been identified in Nassau and Suffolk Counties, on Staten Island, and in other areas in and around New York City, with restrictions going into effect shortly. In addition, broader closures of non-essential businesses are under discussion by government and public health officials.

The Court community itself has also faced increased challenges in recent weeks. There have been repeated instances of individuals requiring quarantine due to actual or likely community exposure to COVID-19. These incidents involve witnesses, case and trial participants, defendants, court staff, court security personnel, and others. Because of the New York state quarantine requirements, witnesses from out of state face quarantine in New York from four to 14 days before they can enter the courthouse, imposing costs, burdens, and often delay in proceedings. The rising infection rate, school closings requiring home child care, quarantine rules, and other restrictions also impact the availability of individuals for jury service, potentially impacting the need to summon larger jury pools, and potentially diminishing the representative nature of the pool summoned. Federal detainees are subject to mandatory quarantine and isolation periods after leaving the detention facility, and defense counsel face significant difficulty communicating and meeting in-person with detained clients for consultation and case preparation.

Upon consideration of all the foregoing circumstances, and balancing the need to assist in the preservation of public safety while effectively administering justice during a critical period in the ongoing COVID-19 pandemic, particularly given the current and anticipated increases in the rates of infection, the Court finds it necessary and advisable to modify and limit certain court operations, in order to help slow the spread of the disease and protect all those who visit and work in the courthouses in the Eastern District of New York. As such,

IT IS HEREBY ORDERED that **for the period November 24, 2020 through January 19, 2021:**

1. **Criminal and Civil Jury and Bench Trials:** All criminal and civil jury selections and trials, and all in-person bench trials, are hereby POSTPONED and CONTINUED pending further Order of the Court. All such continued trials will be rescheduled by further order of the assigned judge. When jury trials resume, scheduling priority will be given to criminal trials with in-custody defendants, with consideration also given to the length of time that cases have been pending. Individual judges presiding over criminal and civil proceedings may take such actions consistent with this Order as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties. Compliance with all trial-specific deadlines in civil and criminal cases shall be at the discretion of the judge.
2. **Speedy Trial Exclusion:** The time period from November 24, 2020 through January 19, 2021 is excluded under the Speedy Trial Act as the ends of justice served by the continuance of all criminal jury trials during this period to protect public health and safety and the fair trial rights of the defendant outweigh the best interests of the public and the defendant in a speedy trial pursuant to 18 U.S.C. § 3161(h)(7)(A) for all of the reasons set forth in this Order, including, among others, the impact of worsening local and national conditions, and the upward trend in cases and hospitalizations in this District on the ability to summon an adequate and representative spectrum of jurors; the increased risk to litigants, defendants, counsel, witnesses, court personnel, and members of the public to safely travel to and assemble in court; and the need to limit the size of gatherings and in-person proceedings in the interest of safety. The presiding judge in any criminal case for which a jury trial is postponed under this Order may make any additional findings and exclude additional time as necessary and appropriate regarding the scheduling of any new date for trial.
3. **Grand Jury Selections:** The selections of all new grand juries and replacement grand jurors are SUSPENDED. Currently empaneled grand juries may continue to convene unless otherwise directed by further order of the Court. All grand jury sessions must be conducted utilizing all health and safety precautions adopted by the Court.
4. **Civil Proceedings:** All civil proceedings shall be conducted remotely by telephone or video conference.
5. **Criminal Proceedings Other Than Trials:** All criminal hearings, conferences, sentencings, and change of plea hearings may continue to be held in-person, subject

to modification should conditions change. However, no hearing or other proceeding in any courthouse shall take place with more than 25 people present in the same courtroom,¹ including the presiding judge, court staff, case participants, and members of the public, absent prior consultation with the Chief Judge. All persons present must wear masks at all times (other than a testifying witness who must wear a face shield), and all persons present must observe proper social distancing and adhere to all other health and safety measures adopted by the Court. To the maximum extent possible, all such criminal proceedings should be conducted remotely pursuant to the CARES Act and Administrative Order No. 2020-13-1, unless the defendant does not consent to proceed remotely, or the proceeding cannot be conducted remotely for security reasons or because of other compelling circumstances.

6. **Arraignments, Pre-Indictment Proceedings and Initial Conferences:** Arraignments, detention hearings, preliminary hearings, pre-indictment proceedings, and initial appearances shall continue utilizing the remote procedures that have heretofore been implemented by the Court, or in a manner otherwise consistent with this Order. Due to the ongoing exigent circumstances created by the COVID-19 pandemic as outlined herein, the Court finds that “extraordinary circumstances,” as that term is used in Federal Rule of Criminal Procedure 5.1(d), exist. Accordingly, the Magistrate Judge may extend the time limits required under the Rule upon a showing that justice requires the delay.
7. **Exceptions to this Order in Criminal Cases:** The Court is cognizant of the right of a criminal defendant to a speedy and public trial under the Sixth Amendment, and the particular application of that right in cases involving a defendant who is detained pending trial. Any motion by a criminal defendant seeking an exception to this order so as to exercise that right should be directed to the District Judge assigned to the matter; provided, however, that no such exception may be ordered without consultation with the Chief Judge.
8. **Prior Administrative Orders In Effect:** All prior Administrative Orders relating to the COVID-19 pandemic shall remain in force and effect pursuant to their terms. Further orders addressing court operations in response to the continuing COVID-19 health emergency will be issued as circumstances warrant.

SO ORDERED.

Dated: Brooklyn, New York
November 24, 2020

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ROSLYNN R. MAUSKOPF
Chief United States District Judge

¹ This limit is also subject to the occupancy limit with social distancing of the particular courtroom being used, recognizing that the only courtrooms that can accommodate up to 25 people with proper social distancing are located in the Celler and D’Amato Courthouses.