

Chief Judge Laura Taylor Swain

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: CORONAVIRUS/COVID-19 PANDEMIC

M10-468

THIS MATTER RELATES TO: Video
Teleconferencing and Telephone Conferencing for
Criminal Proceedings

SIXTH AMENDED
STANDING ORDER

Swain, C.J.:

WHEREAS, on March 13, 2020, the President of the United States declared that the Coronavirus Disease 2019 (“COVID-19”) outbreak constitutes a national emergency under the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*; and

WHEREAS, on March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which provides that, subject to certain requirements, video teleconferencing and telephone conferencing may be used in enumerated criminal proceedings in certain circumstances during the national emergency related to the Coronavirus Disease 2019 (“COVID-19”) and for 30 days thereafter; and

WHEREAS, on March 29, 2020, the Judicial Conference of the United States found that emergency conditions due to the national emergency declared by the President with respect to COVID-19 materially have affected and will materially affect the functioning of the federal courts generally; and

WHEREAS, on March 30, 2020, this court entered an order concluding that it was necessary for the judges in this District to conduct proceedings remotely in accordance with the CARES Act; and

WHEREAS, that order has been amended and extended five times, the most recent such amended order having been entered on June 15, 2021, effective June 23, 2021; and

WHEREAS, the original authorization under the CARES Act extended for one year from March 13, 2020; and

WHEREAS, on February 24, 2021, the President of the United States notified Congress that the national emergency continued in effect, and published notice of the same in the Federal Register on February 26, 2021, and

WHEREAS, the continuation of the national emergency means that this court may continue to authorize remote criminal proceedings; and

WHEREAS, by law, the court's most recent ninety-day authorization of such proceedings under the CARES Act will expire on September 20, 2021; and

WHEREAS, despite medical advances, including widespread availability of vaccines, and significant proportions of the populations of New York City and the Northern Counties having received at least one dose of a vaccine, substantial numbers of persons remain unvaccinated and precautions remain recommended or required in many settings; and

WHEREAS, a highly transmissible variant of the virus has become dominant and precautions remain recommended or required to protect unvaccinated and vulnerable individuals; and

WHEREAS, the courthouses of this district are still operating under restrictive entry conditions and will do so for the foreseeable future; and

WHEREAS, many pre-trial detainees housed at the Metropolitan Correction Center, the Metropolitan Detention Center and local detention facilities remain unvaccinated, as do many staff of such facilities and others responsible for facility and court security; and

WHEREAS, quarantines, lockdowns and other restrictive conditions at detention facilities, and capacity limitations on transportation to courthouses and holding facilities therein continue to constrain the court's ability to conduct in-person criminal proceedings; and

WHEREAS, these conditions make it necessary for the judges in this District to be able to continue to conduct proceedings remotely, by videoconference or teleconference;

The undersigned, as Chief Judge of this court, hereby concludes, for the reasons previously stated, that it remains necessary to invoke the provisions of the CARES Act for the holding of criminal proceedings for ninety additional days, commencing with the expiration of the Fifth Amended Standing Order on September 20, 2021;

IT IS, THEREFORE, ORDERED THAT the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, is authorized for the following proceedings with the consent of the defendant, or juvenile, after consultation with counsel:

- Detention hearings under section 3142 of title 18, United States Code;
- Initial appearances under Rule 5 of the Federal Rules of Criminal Procedure;
- Preliminary hearings under Rule 5.1 of the Federal Rules of Criminal Procedure;
- Waivers of indictment under Rule 7(b) of the Federal Rules of Criminal Procedure;

- Arraignments under Rule 10 of the Federal Rules of Criminal Procedure;
- Probation and supervised release revocation proceedings under Rule 32.1 of the Federal Rules of Criminal Procedure;
- Pretrial release revocation proceedings under section 3148 of title 18, United States Code;
- Appearances under Rule 40 of the Federal Rules of Criminal Procedure;
- Misdemeanor pleas and sentencings as described in Rule 43(b)(2) of the Federal Rules of Criminal Procedure;
- 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.

The undersigned having specifically found that felony pleas under Rule 11 of the Federal Rules of Criminal Procedure; felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure; and equivalent plea and sentencing, or disposition, proceedings under the Federal Juvenile Delinquency Act cannot in all instances be conducted in person without seriously jeopardizing public health and safety,

IT IS FURTHER ORDERED that video teleconferencing, or telephone conferencing if video conferencing is not reasonably available, may be used in such proceedings with the consent of the defendant, or juvenile, after consultation with counsel and upon a finding by the presiding judge that the proceeding cannot be further delayed without serious harm to the interests of justice.

IT IS FURTHER ORDERED that, because the CARES Act does not require the consent of a defendant or juvenile to be in writing, such consent may be obtained in whatever form is most practicable under the circumstances, so long as the defendant's consent is clearly reflected in the record.

IT IS FURTHER ORDERED that any authorization to use video teleconferencing or telephone conferencing pursuant to this Order may be terminated by further Order of the Court or pursuant to Subsections (6)(3) and (6)(5) of the relevant provisions of the CARES Act.

This order will become effective upon the expiration of the court's Fifth Amended Standing Order, which will expire at midnight on September 20, 2021.

IT IS SO ORDERED.

Dated: September 15, 2021
New York, New York

A handwritten signature in black ink, appearing to read "Laura Taylor Swain", with a long horizontal flourish extending to the right.

LAURA TAYLOR SWAIN
Chief United States District Judge