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Chief Judge Colleen McMahon

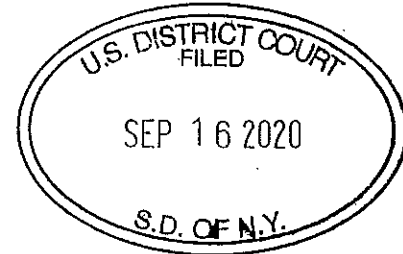
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: CORONAVIRUS/COVID-19 PANDEMIC

M10-468

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

SECOND AMENDED  
STANDING ORDER



McMahon, 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 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 invoked the provisions of the CARES Act to authorize the holding of criminal proceedings by video or telephone conferencing; and

WHEREAS, on June 26, 2020, in light of then-current conditions, this court entered an Amended Standing Order, extending the invocation of the CARES Act for an additional ninety day period, commencing June 27, 2020; and

WHEREAS, by law the period authorized in the Amended Standing Order will expire at midnight on September 25, 2020; and

WHEREAS, despite the reopening of the courthouses of this district to the public, many judges and staff of the United States District Court for the Southern District of New York continue to work remotely, as do members of the staff of The United States Attorney’s Office for the Southern District of New York and the Office of the Federal Defender of New York; and

WHEREAS, many attorneys, including private criminal defense counsel and members of the court's Criminal Justice Act panel, are unable to come to the courthouse because they are at high risk for contracting COVID-19; and

WHEREAS, while a limited number of pre-trial detainees housed at the Metropolitan Correction Center, the Metropolitan Detention Center and the Queens Detention Facility are being produced to the courthouse for in-person proceedings, the number that can be produced on any given day, given isolation and quarantining requirements imposed by the Bureau of Prisons, is far fewer than the number of criminal proceedings that are pending on the court's docket. Detainees housed in local jails north of New York City also cannot be produced with regularity; and

WHEREAS, the Metropolitan Correction Center, the Manhattan Detention Center and the Queens Detention Facility have not yet formally resumed attorney in-person visitation, and while they are planning to do so there will be limitations on the ability of counsel to visit their incarcerated clients; and

WHEREAS, these conditions, which are unlikely to be alleviated in the near future, make it impossible for the judges in this District to conduct all criminal proceedings in person in the courthouses; and

WHEREAS, I, as Chief Judge of this court, conclude that it remains necessary to invoke the provisions of the CARES Act for the holding of criminal proceedings for ninety additional days, commencing on September 26, when the period authorized in the court's Amended Standing Order expires;

IT IS, THEREFORE, ORDERED THAT the use of video conferencing, or telephone conferencing if video conferencing 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(6)(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.

While a limited number of felony pleas and felony sentencings have been held in person in our courthouses, the undersigned specifically finds that conducting all felony pleas under Rule 11 of the Federal Rules of Criminal Procedure, all felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure, and all equivalent plea and sentencing, or disposition, proceedings under the Federal Juvenile Delinquency Act cannot be conducted in person without seriously jeopardizing public health and safety; and so

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 shall become effective, and the ninety day period contemplated herein shall commence, at 12:01 AM on September 26, 2020.

IT IS SO ORDERED.

Dated: September 16, 2020  
New York, New York



COLLEEN McMAHON  
Chief United States District Judge