

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

Miscellaneous Case No. 2:20-mc-00052

On June 25, this authorization was **extended** for 90 days. On September 21, this authorization was **extended** until Dec. 20, 2020.



**IN RE: VIDEOCONFERENCING FOR
CRIMINAL PROCEEDINGS UNDER THE
CARES ACT IN LIGHT OF THE
NATIONAL EMERGENCY CREATED BY
THE COVID-19 PANDEMIC**

GENERAL ORDER # 4

The Court issues this General Order as one in a series of General Orders in response to the spread of the Coronavirus Disease 2019 (COVID-19) pandemic in the Southern District of West Virginia and elsewhere. On March 13, 2020 the President of the United States declared a national emergency under the National Emergencies Act, 50 U.S.C. § 1601 et seq., in light of the COVID-19 pandemic. There are multiple confirmed cases of the disease in the State of West Virginia, and the Governor of the State has also declared a state of emergency. As a result, large indoor gatherings are limited and only essential travel is permitted.

On March 27, 2020 the President signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), H.R. 748, which vests certain authority in a Chief District Judge to permit videoconferencing for certain criminal proceedings if the Judicial Conference of the United States first finds that the national emergency

declared by the President with respect to COVID-19 will materially affect the functioning of the Federal courts generally.

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, will materially affect the functioning of the Federal courts generally.

Accordingly, pursuant to Section 15002(b)(1) of the CARES Act and the findings of the Judicial Conference, acting as Chief Judge on my own motion, it is hereby ORDERED that videoconferencing—or telephone conferencing if videoconferencing is not reasonably available—is hereby authorized in the Southern District of West Virginia as a method to conduct the following criminal proceedings listed in Section 15002(b)(1) of the CARES Act, only with the consent of the defendant or the juvenile after consultation with counsel:

- Detention hearings under 18 U.S.C. § 3142;
- 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 18 U.S.C. § 3148;
- 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; and
- Proceedings under chapter 403 of title 18, United States Code (the “Federal Juvenile Delinquency Act”), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings.

Pursuant to Section 15002(b)(2) of the CARES Act, I hereby 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 be conducted in person in the Southern District of West Virginia without seriously jeopardizing public health and safety.

Accordingly, acting as Chief Judge on my own motion, it is hereby ORDERED that if the district judge in a particular case finds for specific reasons that a felony plea under Rule 11 of the Federal Rules of Criminal Procedure, a felony sentencing under Rule 32 of the Federal Rules of Criminal Procedure (or any equivalent plea and sentencing, or disposition 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 equivalent proceeding may be conducted by

videoconferencing, or by telephone conference if videoconferencing is not reasonably available.

Pursuant to Section 15002(b)(3) of the CARES Act, this Order will remain in 90 days from the date of its entry unless terminated earlier. If emergency conditions continue to exist 90 days from the date of this Order, or if the President's 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 will review this Order and determine whether to extend it. Such review will occur not less frequently than once every 90 days, until the last day of the covered emergency period or until the Chief Judge determines that this authorization is no longer warranted.

SO ORDERED this 30th day of March, 2020.



THOMAS E. JOHNSTON, CHIEF JUDGE