

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

VIDEO AND TELECONFERENCING FOR
CRIMINAL PROCEEDINGS UNDER THE
CARES ACT

GENERAL ORDER NO. 164

WHEREAS, as of the date of this General Order and according to the Centers for Disease Control and Prevention, over 100 million people in the United States have contracted the Coronavirus Disease 2019 (“COVID-19”) and over one million people in the United States have died;

WHEREAS, on March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which authorized the Judicial Conference of the United States to provide authority to Chief District Judges to permit the use of video or audio conference to conduct certain criminal proceedings, and the President signed the CARES Act into law;

WHEREAS, on March 29, 2020, the Judicial Conference of the United States made the appropriate findings as required under the CARES Act, finding specifically that emergency conditions continue to exist due to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. § 1601, *et seq.*) with respect to COVID-19 and those emergency conditions have materially affected and will materially affect the functioning of the federal courts generally;

WHEREAS, on March 30, 2020, the Court issued a General Order permitting the judges in this District to conduct certain criminal proceedings by videoconference, or, where videoconference is not reasonably available, by telephone, as set forth in the CARES Act, for a period of ninety (90) days, and that authorization has been extended by twelve subsequent General Orders, the most recent of which was issued on January 3, 2023;

WHEREAS, the January 3, 2023 General Order (General Order No. 162) authorization pursuant to the CARES Act expires on April 3, 2023, and requires review of the situation to determine whether to extend the video and telephonic conferencing authority;

WHEREAS, the circumstances concerning COVID-19 have improved but remain a concern in the Western District of New York and the United States;

WHEREAS, on February 10, 2023, 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 14, 2023, and the continuation of the national emergency means that this Court may continue to authorize criminal proceedings to be conducted by video and teleconference under the CARES Act;

WHEREAS, acting pursuant to Section 15002(b) of the CARES Act and the authority granted by the Judicial Conference of the United States, as Chief Judge, I find that emergency conditions continue to exist due to COVID-19 and that those conditions continue to materially affect the functioning of the courts within this District;

WHEREAS, pursuant to Section 15002(b)(2) of the CARES Act, as Chief Judge, I further specifically 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 in all instances be conducted in person without seriously and unnecessarily jeopardizing public health and safety;

IT IS HEREBY ORDERED that, pursuant to the authority granted under Section 15002(b)(1) of the CARES Act, judges in this District, with the consent of the defendant or the juvenile after consultation with counsel, are authorized to use video conferencing, or telephonic conferencing if video conferencing is not reasonably available for use, for the following events:

- (A) Detention hearings under Section 3142 of Title 18, United States Code;

- (B) Initial appearances under Rule 5 of the Federal Rules of Criminal Procedure;
- (C) Preliminary hearings under Rule 5.1 of the Federal Rules of Criminal Procedure;
- (D) Waivers of indictment under Rule 7(b) of the Federal Rules of Criminal Procedure;
- (E) Arraignments under Rule 10 of the Federal Rules of Criminal Procedure;
- (F) Probation and supervised release revocation proceedings under Rule 32.1 of the Federal Rules of Criminal Procedure;
- (G) Pretrial release revocation proceedings under Section 3148 of Title 18, United States Code;
- (H) Appearances under Rule 40 of the Federal Rules of Criminal Procedure;
- (I) Misdemeanor pleas and sentencings as described in Rule 43(b)(2) of the Federal Rules of Criminal Procedure; and
- (J) 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;

IT IS FURTHER ORDERED that if a judge in an individual case finds, for specific reasons, that felony pleas or sentencings in those cases cannot be further delayed without serious harm to the interests of justice and makes a determination on the record that it is in the best interest of the health and safety for all to conduct the proceeding remotely, the judge may, with the consent of the defendant or the juvenile after consultation with counsel to proceed remotely and waive personal appearance, conduct those proceedings by video conference, or by telephonic conference

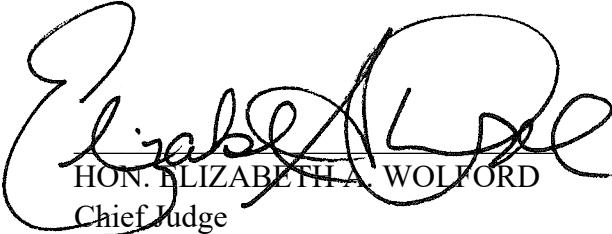
if video conferencing is not reasonably available. Under Section 15002(b)(2)(B) of the CARES Act, this authority extends to equivalent plea, sentencing, or disposition proceedings under 18 U.S.C. § 403 (commonly referred to as the “Federal Juvenile Delinquency Act”);

IT IS FURTHER ORDERED that, pursuant to Section 15002(b)(3) of the CARES Act, and based upon the fact that COVID-19 has not been abated and continues to be of concern, this authorization is effective through July 3, 2023, unless earlier terminated. If the emergency persists longer than July 3, 2023, I will review the situation for a possible extension of authority pursuant to the provisions of the CARES Act; and

IT IS FURTHER ORDERED that, notwithstanding the foregoing, pursuant to Section 15002(b)(3) of the CARES Act, this authority shall terminate on the last day of the covered emergency period or the date on which the Judicial Conference of the United States finds that emergency conditions due to the national emergency declared by the President under the National Emergencies Act with respect to COVID-19 no longer materially affect the functioning of either the federal courts generally or the courts within this District.

IT IS SO ORDERED.

Dated: April 3, 2023
Rochester, New York



HON. ELIZABETH A. WOLFORD
Chief Judge
United States District Court