

**DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISIONS OF ST. CROIX and ST. THOMAS/ST. JOHN**

IN RE:)
) **General Order**
)
DISTRICT COURT OPERATIONS)
DURING THE COVID-19) **Miscellaneous No. 2020-0001**
OUTBREAK)
_____)

**TWENTY-EIGHTH ORDER CONCERNING OPERATIONS OF
THE DISTRICT COURT OF THE VIRGIN ISLANDS
VIDEO AND TELECONFERENCES FOR CRIMINAL PROCEEDINGS**

WHEREAS, 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.*) with respect to the coronavirus disease (“COVID-19”); and

WHEREAS, on February 24, 2021, the President of the United States issued an Order continuing the national emergency declared in connection with the COVID-19 pandemic; and

WHEREAS, on March 27, 2020, Congress passed and the President signed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) authorizing the use of videoconferencing and teleconferencing—under certain circumstances and with the consent of the defendant after consultation with counsel—for various events in criminal cases during the course of the COVID-19 emergency, *see* CARES Act, H.R. 748, §§ 15002 *et seq.*; and

WHEREAS, on March 29, 2020, the Judicial Conference of the United States found, pursuant to the CARES Act, that emergency conditions due to the above-referenced national emergency declared by the President have materially affected and will materially affect the functioning of the federal courts generally; and

WHEREAS, on April 9, 2020, July 8, 2020, October 6, 2020, January 4, 2021, April 4, 2021, and July 3, 2021, the Chief Judge of the District Court of the Virgin Islands issued the Third,

Eighth, Twelfth, Sixteenth, Twentieth, and Twenty-Fourth Orders, respectively, Concerning Operations of the District Court of the Virgin Islands, Video and Teleconferences for Criminal Proceedings (“CARES Act Orders”); and

WHEREAS, in the CARES Act Orders, the Chief Judge exercised the authority granted pursuant to § 15002(b)(1) of the CARES Act, to authorize, on the Chief Judge’s own motion, the use of videoconferencing or teleconferencing for certain criminal proceedings under certain conditions; and

WHEREAS, in the CARES Act Orders, pursuant to § 15002(b)(2) of the CARES Act, the Chief Judge also specifically found 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 could not, or could not with certainty, be conducted in person in this judicial district without seriously jeopardizing public health and safety; and

WHEREAS, in light of the serious public health concerns and resulting impact on court operations that COVID-19 presented during the periods covered by the CARES Act Orders, the Court entered numerous other Orders that embodied precautionary and preventive measures aimed at reducing exposure to COVID-19 and slowing the spread of the disease, including, *inter alia*, the continuance of all civil and criminal bench and jury trials, except any that could be conducted remotely; the limitation of in-person court proceedings to those required by law and not amenable to continuance; and the conduct of videoconference and teleconference proceedings to the greatest extent practicable and permitted by law; and

WHEREAS, although in the Court’s Eleventh, Thirteenth, Fourteenth, Eighteenth, Nineteenth, Twenty-First, Twenty-Second, Twenty-Third, Twenty-Fifth, Twenty-Sixth, and Twenty-Seventh Orders entered on September 30, 2020, October 31, 2020, November 30, 2020,

February 12, 2021, March 31, 2021, April 30, 2021, May 31, 2021, June 30, 2021, July 29, 2021, August 30, 2021, and September 30, 2021, respectively, the Court adjusted its operations as appropriate, the Court nonetheless recognized certain issues that counseled in favor of caution: the continuing danger and threat to public health and safety that COVID-19 and its variants pose; the unpredictability and uncertainty of the pandemic's impact in the Virgin Islands at any given time; the need for the continued implementation of precautionary and preventive measures; and the need for flexibility to adjust the Court's operations in light of the COVID-19 circumstances in the Territory; and

WHEREAS, in the Court's most recent Order—the Twenty-Seventh Order—entered on September 30, 2021, the Court continued to recognize the danger and threat to public health and safety presented by COVID-19 in light of the new variant strains of the virus that are widely reported to be even more easily transmissible than the earlier variants; the uncertainty regarding how long vaccine protection lasts; and the unpredictability regarding the potential for a rise in infections; and

WHEREAS, in the Twenty-Fourth Order—the sixth of the CARES Act Orders—the Chief Judge ordered that pursuant to § 15002(b)(3) of the CARES Act, the Twenty-Fourth Order would remain in effect for 90 days, unless terminated earlier, and that if on the 90th day, the President's emergency declaration remained 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 would review the authorization in the Twenty-Fourth Order and determine whether it should be extended; and

WHEREAS, on this day, October 1, 2021, the 90th day after the entry of the Court's Twentieth Order, the President's emergency declaration and the Judicial Conference's finding remain in effect; and

WHEREAS, as Chief Judge, the undersigned continues to have the authority, pursuant to § 15002(b)(1) of the CARES Act, to authorize, on my own motion, the use of videoconferencing or teleconferencing for certain criminal proceedings under certain conditions; and

WHEREAS, as Chief Judge and pursuant to § 15002(b)(2) of the CARES Act, the undersigned specifically finds, on my own motion, that in this judicial district 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 still cannot, with certainty, be conducted in person without seriously jeopardizing public health and safety, in view of the continuing impact and unpredictability of the pandemic as reflected in the Court's General Orders and most recently in the Court's Twenty-Seventh Order; and

NOW THEREFORE, it is hereby

ORDERED that, pursuant to § 15002(b)(3) of the CARES Act, the Court's Third Order entered on April 19, 2020—as renewed and extended by the Court's Eighth, Twelfth, Sixteenth, Twentieth, and Twenty-Fourth Orders entered on July 8, 2020, October 6, 2020, January 4, 2021, April 4, 2021, and July 3, 2021, respectively—is renewed and extended to the fullest extent permitted by law for 90 days from the date of this Order unless terminated earlier. Specifically, it is hereby

ORDERED that, pursuant to § 15002(b)(1) of the CARES Act, videoconferencing, or teleconferencing if videoconferencing is not reasonably available, is authorized for use for the

following criminal proceedings, with the consent of the defendant, or the 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; and
- 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;

and it is further

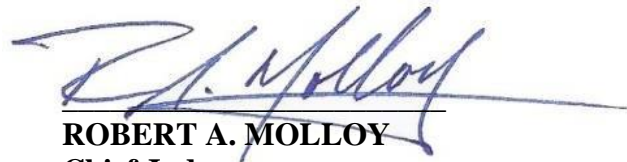
ORDERED that, pursuant to § 15002(b)(2) of the CARES Act, if a district judge in a particular case finds for specific reasons that a felony plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice, the judge may, with the consent of the defendant after consultation with counsel, use videoconferencing, or teleconferencing if videoconferencing is not reasonably available, for the felony plea or sentencing in that case. Judges may also use this authority for equivalent events in juvenile cases as described in § 15002(b)(2)(B), with the consent of the juvenile after consultation with counsel; and it is further

ORDERED that, pursuant to § 15002(b)(3) of the CARES Act, if 90 days from the date of this Order, 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 shall review the authorization described in this Order and determine whether it shall be further extended. 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 the authorization is no longer warranted.

SO ORDERED.

Date: October 1, 2021


ROBERT A. MOLLOY
Chief Judge