

**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-SECOND ORDER CONCERNING OPERATIONS OF
THE DISTRICT COURT OF THE VIRGIN ISLANDS
DURING THE COVID-19 OUTBREAK**

UPON CONSIDERATION of the current conditions surrounding the coronavirus disease (“COVID-19”), including the broader availability of the COVID-19 vaccines and the low positivity rate in the U.S. Virgin Islands, this General Order continues in full force and effect the extended “soft reopening” of District Court operations that was implemented effective May 1, 2021, by the Twenty-First Order Concerning Operations of the District Court of the Virgin Islands During the COVID-19 Outbreak. The extended soft reopening allows certain in-person activities and proceedings to be conducted as set forth herein, including jury trials. Nevertheless, the Court remains mindful of the continued emergence of variant strains of the virus, the uncertainty regarding how effective vaccines are against variant strains and how long vaccine protection lasts, and the unpredictability regarding the potential for a rise in infections. This Order will take effect on June 1, 2021, and will remain in effect through June 30, 2021, unless modified or terminated earlier or extended by further Order of the Court.

WHEREAS, in response to the spread of COVID-19, a public health emergency and a national emergency under the National Emergencies Act (50 U.S.C. §§ 1601 *et seq.*) were declared by the Secretary of the United States Department of Health and Human Services and the President of the United States on January 31, 2020 and March 13, 2020, respectively; 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 on April 15, 2021, the Secretary of Health and Human Services renewed the declaration that a public health emergency continues to exist nationwide; and

WHEREAS, the Centers for Disease Control and Prevention (“CDC”) and other public health authorities have advised public and private agencies to take necessary and appropriate precautions to reduce exposure to COVID-19 and slow the spread of the disease; and

WHEREAS, as of May 20, 2021, the CDC and other public health authorities continue to recommend (1) avoiding large events and gatherings, when possible, (2) requiring individuals at large gatherings to wear masks, and (3) requiring individuals at large gatherings to stay at least 6 feet away from people who don’t live with them; and

WHEREAS, in response to the spread of COVID-19, the Governor of the Virgin Islands declared a State of Emergency on March 13, 2020, which has been extended on multiple occasions and continues in effect until rescinded or superseded by Executive Order; and

WHEREAS, in Executive Orders, Supplements thereto, and public announcements issued from March 2020 to the present, the Governor of the Virgin Islands directed and urged various precautionary and preventive actions, designed to respond to, mitigate, and avoid the further spread of COVID-19, while at the same time altering the nature and level of restrictions imposed based on an assessment of the circumstances presented by the COVID-19 pandemic; and

WHEREAS, the Governor’s most recent Executive Order issued on May 25, 2021, keeps in place most of the guidance and directives contained in his January 27, 2021 Order as to the activities that are restricted and those that are permitted during the current “Safer-at-Home Phase,” including *inter alia*, the continued closure of child care facilities and public school campuses; and

WHEREAS, in light of the serious public health concerns that COVID-19 presents, the District Court of the Virgin Islands entered General Orders concerning the operations of the Court on March 17, 2020, March 20, 2020, April 9, 2020, April 16, 2020, April 30, 2020, May 12, 2020, June 12, 2020, July 8, 2020, July 14, 2020, August 31, 2020, September 30, 2020, October 6, 2020, October 31, 2020, November 30, 2020, December 12, 2020, January 4, 2021, January 15, 2021, February 12, 2021, March 31, 2021, April 4, 2021, and April 30, 2021 designed to allow the Court to continue to effectively perform its mission of fairly and impartially administering justice, while at the same time doing so in a manner consistent with the adoption of precautionary and preventive measures aimed at reducing exposure to COVID-19 and slowing the spread of the disease; and

WHEREAS, in its various General Orders, the Court has recognized—and continues to recognize—that the continuing danger and threat to public health and safety that COVID-19 poses and the unpredictability and uncertainty of the COVID-19 impact in the Territory at any given time require, *inter alia*, the continued monitoring of the COVID-19 climate in the Virgin Islands and the continental United States; the continued implementation of precautionary and preventive measures aimed at addressing the exigencies of the circumstances presented; and the flexibility to adjust the Court’s operations in light of the COVID-19 situation in the Territory, the capacity of the Court, and the needs of particular matters before the Court; and

WHEREAS, based on the Court’s continued monitoring of the COVID-19 climate in the Virgin Islands, the Court has adjusted its operations during the course of the COVID-19 pandemic as the circumstances warranted; and

WHEREAS, the most recent trend in the number of persons testing positive for COVID-19 in the Virgin Islands and the corresponding positivity rates, as reported by the Virgin Islands Department of Health, reveals that in the month of May, 317 new positive test results were recorded out of 11,363 tests administered, corresponding to a positivity rate of 2.79%; further, in the past two

weeks, 181 new positive test results were recorded out of 6,026 tests administered, corresponding to a positivity rate of 3.00%;¹ and

WHEREAS, according to the Virgin Islands Department of Health, as of May 24, 2021, 31,645 individuals—corresponding to 39.9% of the vaccine-eligible population—are fully vaccinated and 39,871 individuals—corresponding to 50.2% of the vaccine-eligible population—have obtained at least one dose of a vaccine; and

WHEREAS, based on these trends, the Court concludes that its extended soft reopening, including jury trials, with the established protocols can be maintained; and

WHEREAS, notwithstanding the increased optimism for further relaxation of restrictions presented by the availability of vaccines and the relatively low positivity rates in the Virgin Islands, the Court concludes that there remains a continuing danger and threat to public health and safety from 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 variant strains; the uncertainty regarding how effective vaccines are against variant strains and how long vaccine protection lasts; the fact that less than half of the Virgin Islands population is fully vaccinated; and the unpredictability regarding the potential for a rise in infections; and

WHEREAS, the Court recognizes that jury selection in the District of the Virgin Islands frequently involves large jury venire pools, which often consist of individuals in—or caring for those in—the age categories identified by the CDC as being especially at risk; individuals who are otherwise at enhanced health risks for other recognized reasons; and parents or guardians of school age children who remain involved in at-home virtual learning, thus increasing the likelihood of the unavailability

¹ In comparison, when the Court implemented a soft reopening in October 2020, and instituted an incremental resumption of jury trials in November 2020, the positivity rate for the month of October was 1.46%. Additionally, when the Court instituted the current incremental resumption of jury trials in May 2021, the positivity rate for the month of April was 1.08%.

of a significant number of potential jurors and the challenges of convening a representative jury venire; and

WHEREAS, in view of the foregoing, the District Court deems it appropriate to continue the implementation of an extended soft reopening of Court operations, including the resumption of jury trials; and

NOW, THEREFORE, in order to continue to promote public health and safety, and the health and safety of Court personnel and those with whom they interact in conducting the business of the Court, counsel, litigants, other case participants, jurors, persons with other business at the courthouse, and the general public, and consistent with the accomplishment of the Court's mission, it is hereby **ORDERED** as follows:

1. The District Court of the Virgin Islands will remain open for official business in both the St. Croix and the St. Thomas/St. John Divisions of the Court, subject to the conditions set forth in this Order.

2. The District Court shall continue the implementation of the extended "soft reopening" of Court operations that was initiated on May 1, 2021, which permits the following:

- a. Grand jury proceedings, provided that quorums can be established;
- b. In-person court proceedings for any matters that do not involve large numbers of persons in the courtroom, with proceedings that qualify for this exception to the limitation on in-person proceedings to be determined in the sole discretion of the presiding judge;
- c. Central Violations Bureau proceedings;
- d. Clerk's Office counter services, except that payments in cash will not be accepted. Payments may be made by personal check, credit and debit cards, money order, or

certified bank check, except that criminal debts cannot be paid by personal check or credit and debit cards; and

e. Civil and criminal jury trials before any judge or magistrate judge in either Division of the Court, as determined and scheduled by the presiding judge; the incremental resumption of which may be modified in further General Orders as may be deemed necessary and appropriate.

3. All deadlines set by Federal or Local Rules or Court Orders, including, but not limited to, scheduling orders in all civil and criminal cases, remain in effect unless modified by further General Order of the Court or by Order of the assigned judicial officer.

4. Except as otherwise stated herein or inconsistent with the “soft reopening” provisions set forth above, the First, Second, Fourth, Sixth, Seventh, Ninth, Tenth, Eleventh, Thirteenth, Fourteenth, Fifteenth, Seventeenth, Eighteenth, Nineteenth, and Twenty-First Orders Concerning Operations of the District Court of the Virgin Islands During the COVID-19 Outbreak, which are set to expire on June 1, 2021, shall be extended and continue in full force and effect through June 30, 2021.

5. With regard to criminal matters, the time period of June 1, 2021, through June 30, 2021, shall be “excluded time” under the Speedy Trial Act for purposes of determining when an information or indictment must be filed or when a trial must commence pursuant to 18 U.S.C. § 3161(h)(7)(A), because the Court specifically finds that the ends of justice served by taking such action materially outweigh the best interests of the public and any defendant in a speedy trial and speedy indictment in view of the serious public health impact of COVID-19 and the resulting need for an incremental, step-by-step approach to the resumption of jury trials as discussed above. Such exclusion is necessary as to any cases scheduled for trial during the June 1, 2021 through June 30, 2021 period in order to assure that there is a full, unhindered, continuously serving jury venire and seated jury in every case, which is central to the sound administration of justice. Such exclusion of time is also necessary in

cases that are set for trial outside of the June 1, 2021 through June 30, 2021 time period, as well as cases that are not yet set for trial, in order to address the reasonably anticipated difficulties in defense counsel communicating or visiting with clients; the difficulties that the parties are likely to face in undertaking all of the tasks necessary to fully prepare for trial; and the inherent delay in the scheduling of further trials as a consequence of the exclusion periods in the Court's COVID-19 General Orders. Further, such exclusion of time is necessary in the grand jury context, notwithstanding permission to resume grand jury proceedings, due to the uncertainty surrounding the ability of the grand juries to form a quorum. The Court may by further Order extend the period of exclusion as circumstances warrant, and the assigned judicial officer may by Order also do so as to any specific proceeding.

6. The June 1, 2021 through June 30, 2021 exclusions applied in criminal matters as discussed above shall also apply to the time limits established by the Interstate Agreement on Detainers, 18 U.S.C. app. 2, § 2 (art. III), in that the detainee shall be deemed to be "unable to stand trial" for that period pursuant to 18 U.S.C. app. 2, § 2 (art. VI(a)).

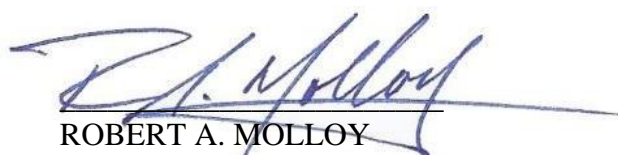
7. For any federal inmate released from imprisonment during the period June 1, 2021, through June 30, 2021, the Standard Condition of Release which requires such inmates to submit to one drug test within 15 days of release is waived.

8. By its terms, the Twentieth Order Concerning Operations of the District Court of the Virgin Islands, Video and Teleconferences for Criminal Proceedings, entered on April 4, 2021, shall remain in effect for 90 days from the date of that Order, unless terminated earlier or extended.

9. This Order shall remain in effect for the period June 1, 2021, through June 30, 2021, unless it, or any portion thereof, is modified or terminated earlier or extended by further Order of the Court.

SO ORDERED.

Date: May 31, 2021


ROBERT A. MOLLOY
Chief Judge