

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: *
THE USE OF VIDEO CONFERENCING *
AND TELECONFERENCING IN * **2:20-mc-466-MRH**
CRIMINAL PROCEEDINGS UNDER *
THE “CARES ACT,” P.L. 116-136 *

**THIRD RENEWED FINDINGS OF THE CHIEF JUDGE AND THIRD RENEWED
ADMINISTRATIVE ORDER REGARDING THE USE OF VIDEO AND
TELECONFERENCING TECHNOLOGY IN CERTAIN CRIMINAL PROCEEDINGS**

WHEREAS, on March 13, 2020, the President declared a national emergency under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the Coronavirus Disease 2019 (COVID–19); and

WHEREAS, on March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), P.L.116-136, vesting certain authority in the Chief Judge of each United States District Court covered by a finding of the Judicial Conference of the United States relative to the impact of COVID-19 on the operations of the Federal courts; and

WHEREAS, on March 29, 2020, the Judicial Conference of the United States found that conditions due to the national emergency declared by the President with respect to COVID–19 will materially affect the functioning of the Federal courts; and

WHEREAS, on March 30, 2020, June 25, 2020, and September 18, 2020 the undersigned as the Chief Judge of this Court found that for purposes of the CARES Act, emergency conditions as found by the Judicial Conference of the United States would materially affect the functioning of this Court, and further 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 be conducted in person without seriously jeopardizing public health and safety, more specifically at least because of actual or reasonably likely continued limitations as follows: (1) enhanced risks to a defendant and others resulting from or attendant to the process of transfer from and to a detention center to/from the Court, (2) enhanced risks to the population of a detention center attendant to the physical participation of a defendant in a proceeding with a number of other participants outside of such detention center followed by return of that defendant to a detention center from outside of the detention center, (3) enhanced risks to proceeding participants attendant to such persons convening in a central physical location after arriving there from disparate locales, (4) on-going difficulty or inability due to medical privacy laws or otherwise to fully assess in advance whether any participant in an in-person proceeding is at an enhanced medical risk due to their specific circumstances, (5) that as to those defendants in pre-trial or pre-sentencing custody, each of the detention centers utilized in this District maintain policies that require those in custody to enter a fourteen (14) day period of isolation or quarantine upon return to a detention center from any court appearance due to public health and safety concerns, (6) one or more of those detention centers maintain policies limiting or prohibiting “in person” meetings with legal counsel for public health and safety reasons, and (7) for public health and safety reasons, this Court has not moved to an approved “resumption of operations” phase whereby “in person” proceedings can be or are to be routinely held, (8) for those same public health and safety reasons, the undersigned has determined and finds that upon more extensive restoration of operations, a very limited number of courtrooms with limited staffing will be utilized to so as to provide for the safe and sanitary conduct of proceedings, and therefore for public health and safety reasons and due to that limitation on courtroom usage and

staffing protocols for those reasons, requiring the conduct of only “in person” proceedings will necessarily work a material delay in the conduct of proceedings to which defendants would otherwise consent and would desire be conducted by video conferencing to preserve and advance the ends of justice in their specific case;

WHEREAS, the Court further finds and concludes that the above-listed findings and conditions continue to exist as of the date of this Order and are expected to exist for all or substantially all of the period of time covered by this Order, and that video and teleconference proceedings held pursuant to the Court’s March 30, 2020, June 25, 2020 and September 18, 2020 Orders have been effective and have substantially furthered the ends of justice and have substantially avoided causing serious harm to the interests of justice, particularly as to the interests of the defendants who have consented to the same. Further, in these regards the undersigned has also given due consideration to the reasonable requests made by the United States Attorney’s Office, Federal Public Defender and CJA Panel Representative for this District that criminal docket proceedings proceed in any prudent fashion while at the same time in-person, in-court proceedings be minimized to the extent prudent, reasonably possible, and permitted by law in order to mitigate any enhanced health and other risks to the participants in such proceedings;

THEREFORE, upon the motion of the undersigned as the Chief Judge of this Court, and with the concurrence of the Board of Judges of this Court, it is ORDERED by the undersigned in his capacity as the Chief Judge of this Court that the undersigned’s Order of March 30, 2020 as renewed by the similar Orders of June 25, 2020 and September 18, 2020 are hereby RENEWED AND EXTENDED to the fullest extent permitted by law and to and for ninety (90) days from the date hereof, and video teleconferencing, and/or telephone conferencing if video teleconferencing

is not reasonably available either generally or in a specific case, is continued to be AUTHORIZED for use for and in all proceedings pursuant to the terms of Section 15002(b) of the CARES Act, and more specifically as to all criminal proceedings as are set forth in Section 15002(b)(1) of the CARES Act, with the consent of the defendant or the involved juvenile as is required by law and after consultation with counsel, including:

- 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 (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 Section 15002(b)(2) of the CARES Act 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 as is required by law and after consultation with counsel, the plea, sentencing, or equivalent proceeding may be conducted by video teleconference, and/or by telephone conference if video teleconferencing is not reasonably available generally or in a specific case; and it is further

ORDERED that pursuant to Section 15002(b)(3) of the CARES Act that this Order is in effect for ninety (90) days from the date of its entry, unless it is terminated or vacated prior to such date according to law. If on the date falling ninety (90) days after the date of this Order the President's emergency declaration remains in effect, as does the Judicial Conference's finding that the emergency conditions will materially affect the functioning of the Federal courts, the Chief Judge (or other judicial officer as authorized by P.L. 116-136) shall review the authorization described in this Order and determine whether it shall be extended. Such reviews will occur thereafter not less frequently than once every ninety (90) days until the last day of the covered emergency period or until the Chief Judge (or other authorized judicial officer) determines that the authorization is no longer warranted. Should the declaration of national emergency or the above-referenced finding of the Judicial Conference (or either of them) terminate or be revoked prior to the expiration of ninety (90) days from the date of the Order (or during any extension thereof), then this Order may then be vacated according to law.

Date: December 14, 2020

/s/ Mark R. Hornak
Mark R. Hornak
Chief United States District Judge