

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

| | | |
|-----------------------------|---|---------------------------|
| IN RE: ADMINISTRATIVE ORDER |) | |
| CONCERNING JURY TRIALS |) | |
| AND CERTAIN OTHER |) | Misc. No. 2:20-mc-394-MRH |
| PROCEEDINGS RELATIVE TO |) | |
| COVID-19 MATTERS |) | |
| |) | |

ADMINISTRATIVE ORDER

(UPDATED AS OF APRIL 27, 2021)

Beginning on March 13, 2020 this Court has entered a series of Administrative Orders modifying or suspending certain Court operations in light of the exigent circumstances created by the COVID-19 pandemic. From that time through May 3, 2021 jury trials have been suspended by such Orders, based on the findings contained in them. The Administrative Orders previously entered by this Court concluded that the extent of the COVID-19 virus outbreak in the District prevented the conduct of jury trials in a manner consistent with sound and recommended public health advisories and directives and in consideration of matters necessary for the conduct of a fair trial and determined that the restrictions on the conduct of jury trials were required until further Order of the Court. More specifically, the Court made and hereby renews the following findings:

A. Public health authorities have advised, and continue to advise, public and private agencies to continue to take all necessary and appropriate precautions to reduce the possibility of exposure to and transmission of novel coronavirus (“COVID-19”) and to slow the spread of the disease by among other things limiting the size and occupancy of sustained group gatherings of people, maintaining consistent social distancing among people in all settings, to provide for the use of masks, and limiting sustained indoor activities involving spoken presentations; and

B. Jury selection in this District frequently involves the necessity for larger jury venire pools (and in such regards, particularly in criminal trial jury selections), often consisting of individuals coming from wide geographic areas, and who are in or caring for those in the age and other vulnerability categories identified by the federal Centers for Disease Control and Prevention (“CDC”) as being particularly at risk, or who are otherwise at substantially enhanced health risks for other recognized reasons, along with individuals being required to travel extensively and from a distance and/or via public transportation for such service given the geographic scope and size of the District and each of its Divisions; and

C. There have been in place public health advisories and cautionary health directives issued by applicable public authorities relative to the gathering of groups of people in public settings who are not cohabiting family or household members, and in particular indoor settings. These advisories have had the effect of advising the substantial limiting of operations at such locations which are proceeding in conformity with such advisories, including places of employment, primary and secondary schools, childcare facilities, eldercare facilities, nursery and preschools, and similar vital services and other institutions for an extended period of time, and many of those relevant directives remain in force and/or of actual practical effect; and

D. While such publicly applicable limitations and advisories have from time to time been relaxed to a degree, they nonetheless counsel that organizations and institutions continue to take all reasonable steps to secure the public health by compliance with applicable recommendations of the CDC and other governmental and health agencies including limitations on the population size of gatherings, limitations on sustained indoor gatherings and requiring the use of face coverings, persistent physical distancing of individuals and other protective measures,

and limitations of group gatherings not consisting of cohabiting family or household members;
and

E. The process of responding to jury summonses and service on juries by those employed in essential public functions, including in healthcare operations, those who are at increased risk of COVID-19 due to age, health vulnerabilities or other reasons, and those who will face substantial childcare challenges arising from the renewed, on-going and extended closure of schools and/or curtailment of in-person instruction creates a serious impact on the capacity of persons so employed or engaged and summoned to serve, increasing substantially the likelihood of the need to summon ever-larger jury venire pools for potential service; and

F. The resumption of jury trials (and in particular criminal case jury trials) in this Court will in many cases involve the extensive use of juror questionnaires and more complex *voir dire* processes, which will increase substantially the period of time from the date of initial jury summons to jury selection, the periods of time involved in such jury selections (with larger groups of people necessarily present) and the conduct of a trial and related proceedings, along with limitations on travel of necessary witnesses not resident in this District, along with significant limitations on the number of jury trials that can be conducted at the same time in any one Division of the Court in order to meet the goals of public health protocols as outlined above; and

G. Governmental public health orders applicable to all portions of this judicial district, dating to March 12, 2020, have in letter or effect materially and substantially limited, and the Court is advised continue to limit, the ability of defense counsel to engage in necessary case and field investigations and client consultations, particularly but not exclusively as to detained defendants;
and

H. The dynamic nature and uncertainty of the current public health situation in this District (including but not limited to community penetration and spread of the COVID-19 virus, availability of critical care medical services, and COVID-19 vaccinations), the limitations on public transportation services and the present material uncertainty of primary and secondary school operations affecting many of those who would be summoned in the near term for jury service (including the episodic curtailment or physical closures of “in person” operations at public and private schools in locations across this District relative to an increased prevalence of COVID-19 infections among those in younger age cohorts) would increase the likely hardship on a number of those so summoned, potentially impacting the jury pools of those that could actually serve without such significant hardship, and at the same time increasing the need for ever-larger pools of summoned jurors, generating the gathering of larger groups of individuals; and

I. The detention centers where this District’s federal detainees are resident have for health safety reasons limited the movement of detained individuals from and then back to those facilities, have imposed mandatory quarantine and isolation periods for any detained person who leaves the detention facility for any reason or is transferred into such facility, and have also materially limited or as to certain detained individuals prohibited direct physical visitation and interaction of counsel with those detained in such facilities that may be reasonably necessary for purposes of consultation and trial preparation and full engagement by such persons in the defense of their case, and the timing of the return of detention centers to fully open operations and the terms of such remain materially uncertain; and

J. The on-going limitations on reasonably and broadly available COVID-19 testing and contact tracing protocols and resources increase the uncertainty of the current and near-term health status of summoned jurors and other necessary trial participants and the ability to assess

their health status, and which counsel the continued need for precautionary actions including but not limited to the use of face coverings by all trial participants; and

K. The Court has been carefully considering and then applying the recommended phased resumption of operations protocols applicable to the federal trial courts, including this Court, which do not yet counsel the resumption of full Court operations nor the full resumption of civil and criminal jury trials in this Court generally and more specifically in all of its various Divisions, and which upon resumption of such will advise meaningful limitations on the number of persons present in any court proceeding and directing significant physical distancing of all in attendance, including trial participants and the public attendant to public proceedings; and

L. The Administrative Office of the United States Courts (“AO”) convened a special task force of experienced federal trial judges and court executives which has circulated “best practices” for the conduct of jury trials in the federal courts, giving substantial and principal consideration to the health and safety of all trial participants and the public, which recommendations remain under advisement and subject to on-going revision; and

M. A substantial number of United States District Courts have continued to pause the resumption of jury trials in light of the above factors or in some cases have suspended further jury trials having previously convened them, or are only now beginning to plan to conduct or to conduct one or more jury trials on a limited basis in order to gauge the efficacy of recommended health and safety protocols in a trial setting, the outcomes of which will inform the sound judgment of this Court in these regards, and the provisions of this Order are consistent with the actions taken by such courts; and

N. Publicly available data indicates that there have been increased numerical occurrences and positivity and transmission rates of COVID-19 infections and accompanying

hospitalizations and limitations on critical care resources in a number of the counties which make up this judicial District and more generally, that positive COVID-19 incidence and rates of transmission of the COVID-19 virus remains significant in a material portion of this District; and

O. As a public institution committed to the sound administration of equal justice under law, this Court concludes that it should continue to take reasonable and prudent actions to further that mission of fulfilling an essential public function consistent with public health needs and the health needs of trial and legal proceeding participants.

P. The Court incorporates these findings and its previous findings contained in its prior Administrative Orders on this subject to the fullest extent applicable. The Court further finds and concludes that the Commonwealth of Pennsylvania has recently authorized the availability of COVID-19 vaccinations for all persons age 16 and over, and that the Administrative Office of the United States Courts has developed a program of vaccination available to all Court personnel, to be implemented beginning on or about April 26, 2021. Publicly available and reliable information indicates that there is and will be an increased number of vaccine doses released to the states at an accelerating rate, including into this District in the coming next weeks, which will provide the opportunity to bolster the overall vaccination rate of the District's population. At the same time, as of the date of this Order, such vaccines had not been generally made available to all persons whose presence would be necessary for the conduct of jury trials, and as of the date of this Order, such vaccines are not generally available for administration to those in pretrial custody. Thus, the status of vaccine availability and utilization is a dynamic situation, as is the current public health data relative to the occurrence and transmission of the COVID-19 virus at various locales within this District.

Q. As institutions engaged in essential public functions, courts have endeavored to conduct necessary proceedings safely in the pandemic environment. This Court has made robust use of video and audio technology to conduct proceedings to the fullest extent permitted by law and will continue to do so. This Court has also adopted interim operating protocols (available at https://www.pawd.uscourts.gov/sites/pawd/files/REVISED_Notice_re_Jury_Trial_COVID_Protocols_April_2021.pdf) that provide that its facilities will have been carefully evaluated and modified so that limited jury assembly, jury selection, trials, and jury deliberations may be conducted in a manner that is consistent with masking and social distancing protocols and other public health guidance and directives. Particularly in criminal cases, the interim redesigned jury trial process will require that multiple courtrooms and other designated spaces will be utilized to facilitate any single jury trial to comply with public health protocols. These arrangements will also require closely coordinated scheduling not only for the courtrooms and other facilities involved, but also for the technology support and jury support personnel required. As a result of this use of physical and human resources, it is at this time imprudent to conduct multiple simultaneous jury selections and jury trials in any one Court facility. In addition, the use of resources required to support the conduct of jury trials without specific space and timing limitations would impinge upon the Court's ability to conduct other necessary in-person non-trial proceedings as the Court limits the overall population present in any one Court facility at any one time.

R. In making determinations as to the authorization for the conduct of limited jury trials in these circumstances, the Court must also be mindful of the unprecedented scheduling concerns that apply in light of the Speedy Trial Act. The time period of the continuances implemented by this Court's previous Administrative Orders was excluded under the Speedy Trial Act pursuant to the Court's findings in such regards and pursuant to 18 U.S.C. §3161(h)(7)(A). As

a result, a number of criminal cases have had trial dates and other essential proceedings continued generally, and otherwise suspended generally. Certain defendants in those cases have been detained prior to trial and are now in custody while awaiting trial. The continuances ordered by this Court's Administrative Orders entered since March 13, 2020 have in all cases been based on specific findings made and determined to be applicable to all criminal cases pending and to be filed on this Court's docket.

S. It remains critical that this Court take reasonable steps to assure that the resumption of jury trials in a pandemic environment on either a limited or more general basis will provide reasonable and prudent consideration of the public health and the health of all proceeding participants while providing an accused defendant with the full range of trial rights accorded by law in a setting that provides for the full and appropriate presentation and consideration of the evidence and arguments presented. Accomplishing these goals requires establishing protocols for conducting jury trials which necessarily result in scheduling limitations that require a staggered approach to conducting jury trials. Such a staggered approach will also allow the Court, all trial participants and counsel involved in the trial to implement necessary health and safety protocols and to have adequate time for trial preparation and presentation.

T. Considering all of these matters, the Court concludes that as the Court authorizes jury trials to resume on a limited basis as described herein, it is essential that the Court at the same time find and conclude that resulting trial delays are excludable time under the Speedy Trial Act, as proceeding otherwise will result in an untenable situation requiring multiple trials to be scheduled to occur simultaneously. That would be contrary to applicable public health guidance available to the Court and would negatively impact jurors, court personnel, counsel, and witnesses,

and would likely also interfere substantially with the trial process, including an accused defendant's right to a fair trial.

U. Bearing all of these factors in mind, the Court finds that the only sound method to authorize jury trials to resume in a limited manner that is prudent and considerate of relevant public health advisories is to simultaneously extend to and including September 30, 2021 the applicable time window applicable to all now pending criminal cases, and to those criminal cases filed from the date of this Order to and including September 30, 2021, and that such period of time (the date of this Order to and including September 30, 2021) be considered to be excluded time under the Speedy Trial Act, 18 U.S.C. §3161(h)(7)(A), as set forth below. This staggered jury trial scheduling approach will not only take into account the realities of safely conducting trials in a socially distanced environment and consistent with applicable public health guidance, but will also allow the Judges of this Court to exercise sound discretion to review their criminal trial dockets in an equitable manner to take into account all relevant factors relative to the scheduling and conduct of trial and other proceedings, including the time that an accused defendant has been in custody awaiting trial. In so concluding, the Court is mindful of the fact that the national COVID-19 pandemic is an unprecedented event faced by the federal judiciary requiring solutions that may be unlikely to be repeated. Given the lengthy interruptions in jury trials due to this unprecedented declared and renewed national emergency, a phased approach is entirely justified, if not essential and required, in order to preserve the trial and other rights of those charged with federal offenses in this Court and the rights of the public, and to further the health and safety of all participants in Court proceedings and of the public.

NOW, THEREFORE, in furtherance of the above-stated findings particularized to this District and each matter on, and to be placed on, the Court's criminal docket and in order to

continue to further the essential public functions of this Court and the administration of justice consistent with sound principles of equal justice under law, public health and safety, the health and safety of Court personnel, counsel, litigants, other case participants, jurors, and the general public and in order to minimize the number of large gatherings necessarily attendant to trial jury selection in all Divisions of this Court, to permit for the effective case investigation and trial preparation of counsel for criminal jury trials and other proceedings, to take into consideration the necessary lead time for the effective issuance of a sufficient number of juror summons in conformity with the Court's Jury Plan including the use of relevant juror questionnaires, to provide for a greater degree of date certainty for jury selection and trials (particularly in criminal cases) as best as is reasonable in light of the on-going evolution and changes in the status of the COVID-19 related public health situation in this District and more generally, and in order to minimize travel by participants in Court proceedings (particularly travel by public conveyance), and after continued consultation with representatives of the United States Attorney's Office, the Federal Public Defender, and the CJA Lawyers Panel, and by virtue of the direction of the Board of Judges of this Court, and in furtherance of the provisions of 28 U.S.C. §§ 137(a), 139 and 452, the United States District Court for the Western District of Pennsylvania hereby issues the following Order, in furtherance and continuation of the above and the Court's similar Orders of March 13, 2020, April 16, 2020, May 29, 2020, August 27, 2020, October 30, 2020, and February 2, 2021:

1. This Court, and the United States Courthouses in Pittsburgh, Johnstown, and Erie, have been open and will continue to remain open for the conduct of official business, subject to the following provisions.

2. Except as is otherwise provided below, civil and criminal case jury selections and civil and criminal case jury trials in the Western District of Pennsylvania scheduled to begin (or

which are to be scheduled to begin) before **June 1, 2021** are continued pending further Order of the Court. The Court may issue further Orders concerning this or future general or specific continuances as may be deemed necessary and appropriate. All such continued jury selections and trials will be reset by further Order of the assigned judicial officer. Notwithstanding the above, the Court authorizes on an initial basis the conduct of a limited number of jury trials in each Division of this Court during the period from the date of this Order through May 31, 2021 in order to facilitate and assess the safe and effective implementation of operational protocols for jury trial operations. Such limited initial jury trials may be scheduled by the presiding judicial officer after consultation with counsel and with the concurrence of the Judges of this Court designated by the undersigned to coordinate the scheduling of jury trials. Subject to the then-applicable public health considerations and the advice of the relevant public health professionals, it is anticipated that limited jury trials to be later conducted will be conducted at least initially on a “one trial at a time” basis in each of the Court’s Divisions, and such may be calendared to begin with jury selection on or after June 1, 2021. Such limited jury trials occurring on or after June 1, 2021 and until further Order will be calendared by the presiding judicial officer in designated trial slots/windows after consultation with counsel and with the concurrence of the Judges of this Court designated by the undersigned to coordinate the scheduling of jury trials. In doing so, the Court may cause the designation of a primary and one or more “backup” jury selections/trials for any designated trial slot(s). Nothing in this Order obligates the Court or any judicial officer to schedule or conduct a jury trial or other proceeding in the first instance, or in any specific time frame.

3. All trial-specific or other deadlines in all civil and criminal cases remain in effect unless modified by further Order of the undersigned or by Order of the assigned judicial officer. It is the sense of the Court that its judicial officers will continue to apply the principles of flexibility

and accommodation to reasonable requests for filing or scheduling adjustments necessitated by reasonable fact-based travel, health or safety concerns or directives of public health officials, or the reasonable fact-based health concerns of a participant in any proceeding.

4. Aside from ordering a jury trial to begin before June 1, 2021 (except as provided on the limited basis set forth in paragraph 2 above), the judicial officer presiding over any action or proceeding may take such further actions consistent with this Order as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the substantial rights of the parties. It is the sense of the Court that each judicial officer will confer with counsel in civil cases that are at or approaching the “trial ready” stage in order to discuss the reality that in the ordinary course, the available jury trial slots in each Division will be prioritized for criminal jury trials such that as a general matter civil jury trials will of necessity likely be deferred significantly into the future, along with the feasibility of having such civil cases fully “pre-tried” in the near-term such that they can be called on shorter notice for a jury trial should an available jury trial scheduling slot become available due to the resolution or deferral of a case previously set for a jury trial. Nothing in this Administrative Order affects the authority of any judicial officer to confer with counsel to determine if a given civil or criminal matter can be tried “non-jury” consistent with applicable law, or to advise counsel that a civil jury trial will be deferred to a date certain significantly in the future in order to allow for a higher likelihood of scheduling certainty for counsel and trial participants. It is further anticipated that each judicial officer will confer with counsel in criminal cases to which they are assigned to assess the likely timing and scope of any anticipated jury trials in such cases in order to assist in overall jury trial scheduling within each Division of the Court.

5. The Court is cognizant of the trial, procedural, and substantive rights of all litigants, and also particularly of the rights of criminal defendants to a speedy and public trial by statute and under the Sixth Amendment (and the particular application of that right in cases involving defendants who are detained pending trial). Therefore, any criminal defendant or the United States in a criminal proceeding, or any party to any civil action, who seeks relief from any provision of this Order, including as to the provisions of Paragraph 2 above, or who believes that they are aggrieved by any provision of this Order or any actions taken under its authority, may request such relief in a request directed to the Chief Judge of this Court via a Motion filed at Misc. No. 20-mc-394-MRH, with a copy of such Motion also being filed as a Notice on the case-specific docket. A notice and copy of such filing shall also be provided directly to the Chambers of the Chief Judge. Any such request for relief will be resolved by the Chief Judge or his designee.

6. For each and all of the reasons set forth herein, and in the Court's prior Administrative Orders as to these matters, **the time period of March 13, 2020 to and including September 30, 2021 shall be "excluded time" under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A)**, as the Court finds that the ends of justice served by taking that action substantially outweigh the interests of the parties and the public in a speedy trial, for all of the reasons set forth in this Order, including in the "whereas" clauses set forth above. Therefore, in continuation of the Court's Administrative Orders of March 13, 2020, April 16, 2020, May 29, 2020, August 27, 2020, October 30, 2020, and February 2, 2021 as to these matters (which excluded the time from March 13, 2020 through April 26, 2020, March 13, 2020 through June 12, 2020, March 13, 2020 through September 8, 2020, March 13 through October 31, 2020, and March 13, 2020 through February 8, 2021, and March 13, 2020 through May 3, 2021 respectively), the period of time from March 13, 2020 to and including September 30, 2021 is considered to be excluded time in *all*

criminal proceedings in this Court pursuant to 18 U.S.C. § 3161(h)(7)(A), the Court specifically finding and concluding that the ends of justice served by taking such actions and by such delay materially outweigh the best interests of the public and the defendants in a speedy trial in *all* criminal cases, because, at least, the health and safety circumstances caused by COVID-19 make it necessarily and equally highly unlikely that a jury can be empaneled in *any* criminal cases under the current public health circumstances and under the applicable directives and orders of relevant local, state and federal health and governmental authorities. Specifically, the Court further finds and concludes that such exclusion is necessary in *all* cases to assure that as to cases going to trial, a full, unhindered, continuously serving jury venire and seated jury in every case, which is central to the sound administration of justice, is available. Such exclusion of time is further and also necessary in cases not yet set for trial, and in those cases previously set for trial but continued by this or other Order, in order to address the current actual, and reasonably anticipated future, profound difficulties in defense counsel quickly and effectively communicating with or visiting with detained clients (including those detained in locales under a declared state of emergency and/or where access to jails or detention centers for physical counsel visits is limited and in some cases prohibited with no currently fixed future date for resumed “normal” operations) for the purposes of trial preparation and consultation between client and counsel, along with the inherent delay in the scheduling and rescheduling of criminal trials as a consequence of the exclusion period herein and as contained in prior Orders of this Court. The Court may by further Order extend or modify the period of exclusion as circumstances may warrant, and the assigned judicial officer may by Order also do so relative to any specific proceeding.

7. Individual judicial officers may hold hearings, conferences, sentencings, change of plea hearings, and bench trials in the exercise of their sound discretion, consistent with the

principles of this Order and the other Administrative Orders and the operational protocols of this Court, and after such reasonable consultation with counsel as they may deem appropriate. Such proceedings may be held, and are encouraged to be held, using video/telephone conference technology and resources to the fullest extent permitted by law. Such proceedings may be held in person if such becomes appropriate in the then-existing circumstances as to Court operations and the needs of the case, and as are also consistent with then-applicable public health and safety considerations, directives and advisories from relevant public health authorities (including but not limited to such guidance and directives as to group size limitations, as well as to the movement of detained persons to and from detention centers). The Court will continue to make extensive reasonable and authorized use of video/audio technology for any proceedings, and in setting “in person” proceedings the Court and each assigned judicial officer will give due consideration to the positions of the involved parties, the public interest, the necessity of then conducting in-person proceedings in the circumstances presented, along with any demonstrated and specific personal or public health concerns advanced by any party or participant.

8. All judicial officers are encouraged to continue to conduct proceedings by telephone or video conferencing wherever in their judgment doing so is practicable in a given case and on terms as permitted by law, and to take reasonable measures to avoid the necessity of out-of-town travel (especially by public conveyance) of any litigant, counsel or the public. In furtherance of this Court’s Alternative Dispute Resolution (“ADR”) Policies and Procedures, the designated ADR neutral in any proceeding is hereby authorized to permit participation in any ADR proceeding via video and telephone conference, if in their judgment such will be effective and doing so will minimize travel (especially by public conveyance) by any participant. All judicial officers are encouraged to continue to minimize the need for the personal physical

appearance of a detained person at any proceeding for the protection of the health of such detained person, counsel and the public, unless such personal physical appearance is otherwise appropriate and required by law.

9. Criminal matters before Magistrate Judges, such as initial appearances, arraignments, detention hearings, and the issuance of search warrants, shall continue utilizing such procedures as they or the Court may direct which are consistent with the tenor of this Order. Central Violations Bureau proceedings may be conducted, rescheduled or continued at the direction of the Chief Magistrate Judge.

10. Grand juries shall be seated and shall meet except as may be otherwise directed by further Order of the Court. Naturalization proceedings necessary to preserve the substantial and urgent interests of those to be naturalized and their families may be conducted so long as such occurs in conformity with applicable public health advisories, are limited in time and scope to the minimum reasonably necessary, and are limited in attendance to only those reasonably necessary to the administration of an oath of citizenship or as may otherwise be required by law.

11. Formal in-person proceedings of the Court's RISE, Veterans', and BRIDGES Court Programs are held in abeyance until further Order. The respective "special court" teams and the Probation Office may, at their election, conduct informal sessions, formal sessions and/or supervision via video or teleconference as they deem appropriate.

12. Non-case related meetings and events scheduled to occur at a Court facility prior to October 1, 2021 shall be rescheduled to a later date via the appropriate Court office, unless otherwise authorized by the Court. The Clerk's Office, Probation Office, and all other Court offices and services shall otherwise remain open subject to further Order of the Court. The Chief Judge

of the Bankruptcy Court for this District shall enter such Orders as she deems appropriate for the conduct of that Court's business.

13. This Order amends and updates this Court's Administrative Orders of March 13, 2020, April 16, 2020, May 29, 2020, August 27, 2020, October 30, 2020, and February 2, 2021 on these matters and is subject to amendment or modification in any regard by further Order.

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

Dated: April 27, 2021