

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE: VIDEO CONFERENCING AND :
TELECONFERENCING FOR CRIMINAL : **SEVENTH EXTENSION OF**
PROCEEDINGS UNDER THE CARES ACT : **STANDING ORDER 2021-03**

WHEREAS, on March 13, 2020, the President of the United States declared the outbreak of COVID-19 to be a national emergency, under the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*; and

WHEREAS, on March 27, 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), authorizing the use of video and telephone conferencing, under certain circumstances and with the consent of the defendant, for various criminal case events, during the course of the COVID-19 emergency, see The CARES Act, H.R. 748, pursuant to certain findings by the Judicial Conference of the United States; and

WHEREAS, on March 29, 2020, the Judicial Conference found that emergency conditions, consistent with the national emergency declared with respect to COVID-19, will materially affect the functioning of the federal courts (“Judicial Conference’s finding”); and

WHEREAS, as Chief Judge, I found, on March 30, 2020, pursuant to Sections 15002(b)(1) and (b)(2) of the CARES Act, that criminal proceedings, and specifically, felony pleas and felony sentencings, could not be conducted in person without seriously jeopardizing public health and safety, and therefore entered a Standing Order authorizing the use of video and telephone conferencing in criminal proceedings in conformance with the CARES Act; and

WHEREAS, the national emergency, first declared on March 13, 2020, was continued beyond March 1, 2021, and again, indefinitely beyond March 1, 2022, and accordingly, this Court’s initial CARES Act Standing Order has been extended ten times, the most recent such Order having been entered on August 8, 2022; and

WHEREAS, the national emergency remains in effect, as does the Judicial Conference’s finding, and therefore, this Court may again extend authorization of remote criminal proceedings; and

WHEREAS, pursuant to Section 15002(b)(3) of the CARES Act, this Court’s most recent 90-day authorization of the use of video and telephone conferencing in criminal proceedings, in accordance with the CARES Act, set forth in its August 8, 2022, Sixth Extension of Standing Order 2021-03, will expire on November 6, 2022; and

WHEREAS, 78% of the population of New Jersey has been vaccinated, but however, only 50% of that group has been boosted and a significant percentage of vaccinated individuals has waning immunity and is susceptible to infection; and

WHEREAS, many detainees housed in this District's detention facilities remain unvaccinated and/or unboosted, as do many staff of such facilities and others responsible for facility and Court security; and

WHEREAS, health experts warn of a potential winter wave of the new Omicron BQ subvariants, quickly spreading in many European countries, and in neighboring New York City; and

WHEREAS, the CDC has reported that these new subvariants pose additional threats to immuno-compromised individuals because they are resistant to bebtelovimab, the last monoclonal antibody drug that is effective on all variants, and Evusheld, which works on some; and

WHEREAS, there have also been predictions recently of an upcoming dangerous viral tripledemic, i.e., the confluence of COVID-19, the flu and the respiratory syncytial virus (RSV), which can cause breathing difficulties in small children and older adults, and for which there is currently no vaccine; and

WHEREAS, although the community risk level in all of New Jersey's counties is currently "medium," except for Mercer County, which is "low," continued vigilance with mitigation strategies remains important, as does continued monitoring of the effectiveness of the vaccine and boosters against current and future variants; and

WHEREAS, some attorneys, defendants and members of the public continue to work remotely and restrict their travel or are unable to come to the District's courthouses because they are at higher risk of contracting COVID-19, and the CDC and other public health authorities continue to advise taking precautions to reduce the possibility of exposure to COVID-19 for people with certain medical conditions; and

WHEREAS, based on these circumstances, among others, while in-person proceedings in this District have increased significantly over the past several months, the Court still requires the flexibility to use videoconferencing and teleconferencing when necessary to ensure the safety of all who seek to come before this Court; and

WHEREAS, as Chief Judge, I find, therefore, that due to the continued risk of COVID-19 transmission in detention facilities and the community, there are still enhanced risks of in-person proceedings to defendants, the population of detention centers, and to court participants, and thus, it still remains necessary to conduct proceedings remotely when the interests of justice require it; and

WHEREAS, I further find that video and teleconference proceedings held pursuant to the Court's prior CARES Act 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; and

WHEREAS, I, as Chief Judge, find, pursuant to Section 15002(b)(1) of the CARES Act, that due to the continuing effects of COVID-19, many criminal proceedings still cannot be conducted in person without seriously jeopardizing public health and safety, and that pursuant to

Section 15002(b)(2) of the CARES Act, many felony pleas under Rule 11 of the Federal Rules of Criminal Procedure and many felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure also cannot be conducted in person in this Court without seriously jeopardizing public health and safety; it is hereby

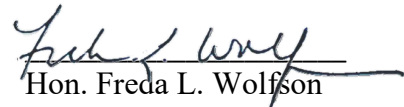
ORDERED, pursuant to Section 15002(b)(3) of the CARES Act, that the authorization in the Court's prior CARES Act Orders of the use of video and telephone conferencing in criminal proceedings is further extended for an additional 90 days from the date of this Order, unless this Order is terminated or vacated prior to such date, according to the procedures set forth in the last paragraph of this Order; and it is further

ORDERED that, in lieu of personal appearance, and with the consent of the defendant after consultation with counsel, video conferencing, or telephone conferencing if video conferencing is not reasonably available, is continued to be authorized for all events listed in Section 15002(b) of the CARES Act, including the ten criminal proceedings enumerated in the Second Extension of Amended Standing Order 2020-06; and it is further

ORDERED that if a judge in an individual case finds, for specific reasons, that any felony plea or felony sentencing, or any equivalent plea or sentencing, as well as 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, after consultation with counsel, the plea, sentencing or any equivalent proceeding, may be conducted by video conference, or by telephone conference if video conferencing is not reasonably available; and it is further

ORDERED that if, 90 days from the date of this Order, the 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. Pursuant to Section 15002(b)(3)(A) of the CARES Act, such review will occur at least 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. Should the above-referenced emergency declaration or the Judicial Conference's finding terminate or be revoked prior to the expiration of 90 days from the date of this Order, then this Order may then be vacated according to law.

November 4, 2022


Hon. Freda L. Wolfson
U.S. Chief District Judge
District of New Jersey