

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA



IN THE MATTER OF)
RENEWED SUSPENSION OF)
JURY TRIALS AND OTHER IN-)
PERSON PROCEEDINGS DURING)
COVID-19 PUBLIC EMERGENCY)
_____)

Order of the Chief Judge 52

On December 3, 2020, the State of California issued a statewide Regional Stay at Home Order predicated on what the Acting State Public Health Director described as “an unprecedented surge in the level of community spread of COVID-19.” <https://www.gov.ca.gov/wp-content/uploads/2020/12/12.3.20-Stay-at-Home-Order-ICU-Scenario.pdf>. The County of San Diego thereafter issued a separate order implementing the state order effective at 11:59 p.m. on December 6, 2020. <https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/HealthOfficerOrderCOVID19.pdf>. Under both orders, indoor operations in which people congregate are generally restricted to 20% of the usual capacity of the facilities in which the operations occur. By their terms, both orders are to remain in effect for at least three weeks.

The effect of the statewide and County of San Diego orders, and consideration of the public health recommendations underlying them, has caused me to reevaluate whether to continue to conduct in-person court proceedings without seriously jeopardizing public health and safety. Among the effects of this resurgence in the COVID-19 virus are: (1) restricted access by criminal defense counsel to federal detention facilities in which their clients are being held; (2) increased apprehension on the part of counsel, witnesses, parties, the public, and Court staff of being personally present in the courtroom; and (3) increased difficulty in summoning and empaneling a representative quorum of trial and grand jurors. After surveying the opinions of the District and Magistrate Judges of this Court and engaging in renewed consultation with members of the Southern District of California planning group, I have determined to temporarily reinstate this Court’s previously-imposed

moratorium on conducting in-person court proceedings. Pursuant to Section 15002(b)(1) of the CARES Act, PL 116-136, March 27, 2020, 134 Stat 281. I therefore hereby reauthorize the use of videoconferencing, or telephone conferencing if videoconferencing is not available, for all events listed in Section 15002(b)(1) of the Act. Under Section 15000(b)(2), I specifically find that felony pleas under Rule 11 and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure cannot be conducted in-person in this district without seriously jeopardizing public health and safety. As a result, if a judge in an individual case finds, for specific reasons, that a felony plea or sentencing 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, to conduct the felony plea or sentencing. Judges may also use this authority for equivalent events in juvenile cases as described in Section 15002(b)(2)(B).

Pursuant to Section 15002(b)(3) of the legislation, I hereby declare that this renewed emergency authorization will remain in effect until January 8, 2021, unless terminated earlier. Under the authority of 18 U.S.C. §3174, the Court issues the following emergency Orders:

1. The Edward J. Schwartz and James M. Carter & Judith N. Keep United States Courthouses in San Diego, and the United States Courthouse in El Centro will remain open for business, subject to the limitations of this Order.
2. All jury and bench trials (including misdemeanor and petty offense cases) in civil and criminal cases in the Southern District of California in which a trial date was previously set are continued until January 11, 2021. New trial or status dates will be set in individual cases on or after January 11, 2021, unless this emergency order is extended. However, all previously set trial-specific deadlines relating to pending criminal cases, including those for filing motions *in limine* and jury instructions, exchanging exhibits, and providing notice of expert witnesses remain in effect. Individual district judges may continue trial-specific deadlines in civil cases at their discretion. New dates will be set in individual civil cases on or before January 11, 2021, unless this order is extended.

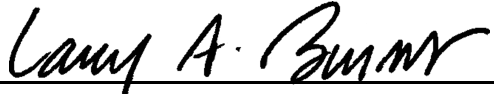
3. Depositions of material witnesses are suspended until January 11, 2021, unless the defendant consents to conducting the depositions via videoconferencing.
4. Except as directed by an individual district judge, in-person criminal proceedings including sentencings, supervised release revocation hearings, motion hearings, arraignments, plea hearings, misdemeanor bench trials, and all proceedings under Federal Rule of Criminal Procedure Rule 5.1, are suspended until January 8, 2021. However, the issuance of criminal complaints and arrest and search warrants, initial appearances, and bail and detention hearings will continue in the ordinary course before the magistrate judges.
5. Except for convening jury trials, individual district judges retain discretion, on a case by case basis, to schedule in-person criminal and civil proceedings, hold hearings, conferences, and bench trials, and otherwise take such actions as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties. In doing so, judges must consider in each individual case whether convening an in-person hearing poses a threat to health and safety. Judges may conduct court proceedings by telephone or videoconferencing where practicable and consistent with the law.
6. On its own motion, the Court finds that the period of suspension of criminal trials and other criminal proceedings implemented by this Order is excluded under the Speedy Trial Act. Specifically, for the reasons articulated in the initial paragraph of this Order, I find that the recent spike in the COVID-19 pandemic constitutes a renewed "judicial emergency" under 18 U.S.C. § 3174. As an alternate basis for this exclusion, I find that under 18 U.S.C. § 3161(h)(7)(A) this temporary suspension of in-person proceedings serves the ends of justice and outweighs the interests of the public, of the government, and of criminal defendants in a speedy trial. The period of exclusion will be in effect from the date of this Order until January 8, 2021, absent further order of the Court or that of any individual district judge. The Court may extend the period of exclusion as circumstances warrant. However, this order does not toll any statutes of limitations, nor any statutory deadline for the filing of an appeal.

7. All grand jury proceedings, including the empanelment of any new grand jury, are suspended until January 8, 2021, or further order of this Court.
8. During the effective period of this Order, all Central Violations Bureau (CVB), Veterans Court, and Alternatives to Prison Solution Program proceedings may proceed only by videoconference or telephonic conference.
9. The requirement under Civil Local Rule 16.1.a. that Early Neutral Evaluation (ENE) Conferences be conducted in-person is suspended until January 8, 2021. During this period, ENE Conferences may be conducted by telephone or videoconferencing.
10. The requirement under Criminal Local Rule 46.1.a. that a defendant posting bail in a criminal case deliver physical copies of bail documents to the Clerk is suspended until January 8, 2021. During this period, all bail documents will continue to be delivered to the Clerk electronically.
11. The Clerk's Office, United States Probation Office, United States Pretrial Services Office, and United States Bankruptcy Court will remain open pending further order of the Court.

This Order is effective immediately and will remain in place until January 8, 2021 absent further order of the Court.

IT IS SO ORDERED.

Dated: December 7, 2020


LARRY ALAN BURNS,
Chief United States District Judge