

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

COURT OPERATIONS AND ACCESS DURING
COVID-19 PANDEMIC AND

GENERAL ORDER NO. 152

VIDEO AND TELECONFERENCING FOR
CRIMINAL PROCEEDINGS UNDER THE
CARES ACT

WHEREAS, as of the date of this General Order and according to the Centers for Disease Control and Prevention (“CDC”), over 57 million people in the United States have contracted the Coronavirus Disease 2019 (“COVID-19”) and over 829,000 people in the United States have died;

WHEREAS, the Court has previously issued General Orders on March 12, 2020; March 13, 2020; March 16, 2020; March 18, 2020; March 19, 2020; March 20, 2020; March 27, 2020; March 30, 2020; April 17, 2020; April 23, 2020; May 13, 2020; June 15, 2020; June 26, 2020; July 15, 2020; September 23, 2020; December 8, 2020; February 24, 2021; April 23, 2021; May 26, 2021; July 14, 2021; August 3, 2021; and October 12, 2021, in response to the COVID-19 Pandemic Event, familiarity with which is assumed and the background information set forth within which is incorporated herein as though fully set forth;

WHEREAS, on March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), which authorized the Judicial Conference of the United States to provide authority to Chief District Judges to permit the use of video or audio conference to conduct certain criminal proceedings;

WHEREAS, on March 27, 2020, the President signed the CARES Act into law;

WHEREAS, on March 29, 2020, the Judicial Conference of the United States made the appropriate findings as required under the CARES Act, finding specifically that emergency conditions continue to exist due to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. § 1601, *et seq.*) with respect to COVID-19 and those emergency conditions have materially affected and will materially affect the functioning of the

federal courts generally;

WHEREAS, on March 30, 2020, the Court issued a General Order permitting the judges in this District to conduct certain criminal proceedings by videoconference, or, where videoconference is not reasonably available, by telephone, as set forth in the CARES Act, for a period of ninety (90) days, and that authorization has been subsequently extended by General Orders issued on June 26, 2020, September 23, 2020, December 8, 2020, February 24, 2021, April 23, 2021, July 14, 2021, and October 12, 2021;

WHEREAS, the October 12, 2021 General Order (General Order No. 150) authorization pursuant to the CARES Act expires on January 10, 2022, and requires review of the situation to determine whether to extend the video and telephonic conferencing authority;

WHEREAS, the circumstances concerning the COVID-19 Pandemic Event remain a grave concern in the Western District of New York and the United States due, in part, to new variants of the virus, including the B.1.1.529 (Omicron) variant;

WHEREAS, as of the date of this General Order, both Erie County and Monroe County (where the District's courthouses are located) have community transmission at a high level as defined by the CDC;

WHEREAS, many pre-trial detainees housed in local jail facilities by the United States Marshals Service remain unvaccinated;

WHEREAS, acting pursuant to Section 15002(b) of the CARES Act and the authority granted by the Judicial Conference of the United States, as Chief Judge, I find that emergency conditions continue to exist due to the COVID-19 Pandemic Event and that those conditions continue to materially affect the functioning of the courts within this District;

WHEREAS, pursuant to Section 15002(b)(2) of the CARES Act, as Chief Judge, I further specifically find 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 cannot in all

instances be conducted in person without seriously and unnecessarily jeopardizing public health and safety;

IT IS HEREBY ORDERED that, pursuant to the authority granted under Section 15002(b)(1) of the CARES Act, judges in this District, with the consent of the defendant or the juvenile after consultation with counsel, are authorized to use video conferencing, or telephonic conferencing if video conferencing is not reasonably available for use, for the following events:

- (A) Detention hearings under Section 3142 of Title 18, United States Code;
- (B) Initial appearances under Rule 5 of the Federal Rules of Criminal Procedure;
- (C) Preliminary hearings under Rule 5.1 of the Federal Rules of Criminal Procedure;
- (D) Waivers of indictment under Rule 7(b) of the Federal Rules of Criminal Procedure;
- (E) Arraignments under Rule 10 of the Federal Rules of Criminal Procedure;
- (F) Probation and supervised release revocation proceedings under Rule 32.1 of the Federal Rules of Criminal Procedure;
- (G) Pretrial release revocation proceedings under Section 3148 of Title 18, United States Code;
- (H) Appearances under Rule 40 of the Federal Rules of Criminal Procedure;
- (I) Misdemeanor pleas and sentencings as described in Rule 43(b)(2) of the Federal Rules of Criminal Procedure; and
- (J) Proceedings under Chapter 403 of Title 18, United States Code (commonly known as the “Federal Juvenile Delinquency Act”), except for contested transfer

hearings and juvenile delinquency adjudication or trial proceedings;

IT IS FURTHER ORDERED that if a judge in an individual case finds, for specific reasons, that felony pleas or sentencings in those cases cannot be further delayed without serious harm to the interests of justice and makes a determination on the record that it is in the best interest of the health and safety for all to conduct the proceeding remotely, the judge may, with the consent of the defendant or the juvenile after consultation with counsel to proceed remotely and waive personal appearance, conduct those proceedings by video conference, or by telephonic conference if video conferencing is not reasonably available. Under Section 15002(b)(2)(B) of the CARES Act, this authority extends to equivalent plea, sentencing, or disposition proceedings under 18 U.S.C. § 403 (commonly referred to as the “Federal Juvenile Delinquency Act”);

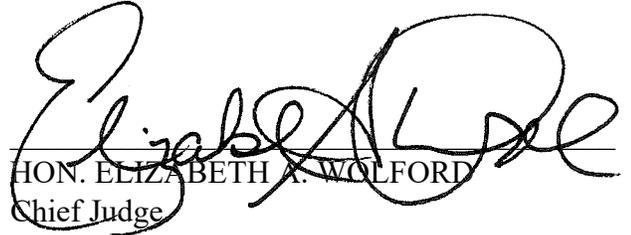
IT IS FURTHER ORDERED that, pursuant to Section 15002(b)(3) of the CARES Act, and based upon the fact that the COVID-19 Pandemic Event continues, it has not been abated, and there continues to be concern about the magnitude of COVID-19 and, in particular, new variants of the virus, this authorization is effective through April 8, 2022, unless earlier terminated. If the emergency persists longer than April 8, 2022, I will review the situation for a possible extension of authority pursuant to the provisions of the CARES Act;

IT IS FURTHER ORDERED that, notwithstanding the foregoing, pursuant to Section 15002(b)(3) of the CARES Act, this authority shall terminate on the last day of the covered emergency period or the date on which the Judicial Conference of the United States finds that emergency conditions due to the national emergency declared by the President under the National Emergencies Act with respect to the COVID-19 Pandemic Event no longer materially affect the functioning of either the federal courts generally or the courts within this District;

IT IS FURTHER ORDERED that all other provisions of General Order 148 entered on July 14, 2021, as modified by General Order 149 entered on August 3, 2021, and General Order 151 entered on December 14, 2021, remain in full force and effect.

IT IS SO ORDERED.

Dated: January 10, 2022
Rochester, New York



HON. ELIZABETH A. WOLFORD
Chief Judge
United States District Court