

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

In re: Administrative Orders of the U. S. District Court

Case No. 3:40-mc-0011

SPECIAL ORDER # 10

On March 13, 2020, the United States District Court for the Southern District of Mississippi entered a Special Order [52] addressing the Coronavirus pandemic. After that, the pandemic grew exponentially in the United States and this district. In response to the pandemic, the President of the United States first declared a national emergency and then, on March 27, 2020, signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Among other things, the CARES Act authorizes the use of video and telephone conferencing, under certain circumstances, for various criminal proceedings during the COVID-19 emergency. The Judicial Conference of the United States also found that conditions due to the national emergency have affected and will continue to materially affect the functioning of the federal courts generally. To protect the public, attorneys, litigants, and those that work in or for the Southern District of Mississippi, the Court has entered nine special orders, six of which [52, 53, 57, 60, 61, 63] curtailed in-court proceedings. Each time, the Court considered, among other factors, the reported cases of COVID-19 and the rate at which the virus was spreading.

The numbers for Mississippi have improved since the last Special Order. For example, the seven-day averages for new cases and deaths have dropped precipitously since peaking in early August. So too, patients on ventilators and in the ICU have both declined in the last two weeks. That said, the numbers are still higher than those that prompted the Court to suspend jury trials in March. And according to the CDC and Mississippi Department of Health, the numbers are expected to again spike with the advent of the cold-and-flu season this fall.

The Court faces a difficult decision. The conditions are not perfect, but they are somewhat better than they have been and will likely grow worse in the coming months. At the same time, the backlog of criminal cases is expanding, which will make it difficult to adequately handle those cases once the pandemic passes.

The Court has therefore concluded that it should use this possible window to try criminal cases if it can safely do so. To that end, it has developed a comprehensive jury-resumption plan that includes steps such as staggered jury selections, limited numbers of trials in each courthouse, requiring social distancing, requiring masks, providing face shields, providing retractable shields in the courtrooms to separate jurors and trial participants, deep cleaning of the courtrooms, hand sanitizers, and other similar measures.

While these steps should mitigate the risk of exposure, they also limit the number of cases that the Court can try at one time and the types of cases that can be safely tried. For example, appropriate social distancing would not be feasible in multi-defendant cases. Similarly, longer trials create greater risks of (1) exposure; (2) overlapping trials in the same courthouse; and (3) the need to quarantine or take other measures before the case concludes. In sum, there will be cases set for trial, but all others will remain subject to a stay.

To be clear, this is not a matter of general congestion on the Court's calendar. *See* 18 U.S.C. § 3161(h)(7)(C). On the contrary, the Court wants to try as many cases as it can, but it is limited by physical space, supplies, resources, and the nature of the virus itself. The Court simply will not subject jurors, defendants, attorneys, witnesses, and Court personnel to the unacceptable risk of conducting trials without appropriate safety measures. Doing so would also expose the inmate population if the defendant contracts COVID-19 during trial and returns to the holding facility. The rash of motions for compassionate release evidences the concern

among the inmate population over exposure to the virus. Finally, attempting to conduct jury trials without these safeguards and limitations would impair the Court's ability to obtain an adequate spectrum of jurors and potentially lead to a miscarriage of justice.

So while a limited number of cases may be set for trial, the ends of justice outweigh the best interest of the public and the defendants in a speedy trial as to the other criminal matters. 18 U.S.C. § 3161(h)(7)(A). Indeed conducting those other cases would place the public (including witnesses and jurors) and the defendant in jeopardy. Accordingly, all civil jury trials are hereby continued. Those criminal cases deemed appropriate for jury trial by the presiding judges may go forward, but all others remain subject to a stay until further order.

As in prior orders, the Court notes that the situation remains fluid, as does the guidance on safe practices. It therefore makes sense to allow the presiding judges to assess the circumstances within their divisions in real time to determine whether it would be appropriate to conduct jury trials and other in-person hearings. The fact that some judges may proceed with trials or in-person hearings in some contexts does not mean that they would be advisable in all divisions or in all contexts. The judges will make those determinations. In addition, conducting hearings in whole or in part by video conferencing will be allowed based on the same findings and under the same parameters initially adopted in Special Order #2.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. This Order supersedes all previous Special Orders.
2. Effective immediately and running until further order from this Court, all civil jury trials and all criminal trials not designated for trial are continued as are any related deadlines. Due to the Court's ongoing efforts to provide a safe courtroom and the limitations

noted above, the period of the continuances for jury trials implemented by this Order are excluded under the Speedy Trial Act, 18 U.S.C § 3161(h)(7)(A).

3. All other in-court hearings and proceedings may go forward at the presiding judge's discretion, including proceedings that involve the attendance of a detainee. As noted above, judges in some divisions may conclude that detainees should not appear in person, and for that reason, certain findings, as required by the CARES Act and as set forth in paragraph 5 below, are being made.

4. For all matters set for in-court proceedings, and all bankruptcy proceedings, the following conditions apply:

A. Counsel must notify the presiding judge (or bankruptcy trustee) and opposing counsel if that attorney or any individuals the attorney intends to bring to the courthouse have any of the following risk factors:

- Persons who a doctor, hospital, or health agency has asked to self-quarantine;
- Persons who have been diagnosed with, or have had contact with anyone who has been diagnosed with, COVID-19;
- Persons with fever, cough, shortness of breath, or loss of smell or taste;
- Any other persons who would raise a reasonable concern of exposure.

Counsel must contact persons they wish to bring to the courthouse and ask whether they have these risk factors. If so, counsel must give notice as soon as possible, but no later than 24 hours before the proceeding. The presiding judge or trustee will have sole discretion to determine whether the proceeding should be delayed or can go forward, perhaps by alternative means.

B. Anyone entering the courthouse will be screened as provided below.

C. Anyone entering the courthouse must wear masks while in any common area of the courthouse and in the courtroom unless speaking during the proceeding. Counsel are instructed to bring their own masks and advise those attending to bring masks. Additional masks will be made available if necessary.

D. Each courtroom will be cleaned after each court session (which could include more than one proceeding). Presiding judges will determine how cleaning should occur during individual proceedings (e.g., cleaning counsel table, the lectern, or witness box).

E. Participants in hearings, as well as spectators, must observe social distancing.

5. Although in-person proceedings are allowed, judges and counsel are still encouraged to utilize video conferencing and teleconferencing to the extent possible to avoid unnecessary disruption in the cases and exposure to the virus. To that end, the Court makes the following additional findings with respect to criminal proceedings addressed in the CARES Act.

A. Having conducted a 90-day review in June 2020, and as Chief Judge acting under Section 15002(b)(1) of the Act, I hereby re-authorize the use of video conferencing, or teleconferencing if video conferencing is not reasonably available, for all events listed in Sections 15002 of the CARES Act.

B. Under Section 15002(b)(2), I further specifically find that felony pleas under Federal Rule of Criminal Procedure 11 and felony sentencings under Rule 32 cannot be conducted in person in every circumstance without seriously jeopardizing public health and safety. As a result, if judges in individual cases find, for specific reasons stated in the record, that felony pleas or sentencings in those cases cannot be further delayed without serious harm to the

interests of justice, the judges may use video conferencing for felony pleas and sentencings in those cases, and may use teleconferencing if video conferencing is not reasonably available.

C. Video conferencing (or alternatively teleconferencing) as described in paragraphs A and B may not occur unless the defendant consents after consultation with counsel. Consent must be in writing.

D. All counsel wishing to conduct proceedings by video conference must comply with the Court's Video-Conferencing Plan as posted on the Court's website.

6. Grand juries have been operating during the pandemic with approval of the Chief Judge. Grand juries may continue under the following limitations.

A. Grand jurors must appear voluntarily and so indicate on the record.

B. The United States Attorney shall implement protocols to protect the health of the grand jurors and others who may come in contact with them.

C. Each grand jury session will be limited to one day.

Any deviation from these conditions will require notice and approval by the Chief Judge.

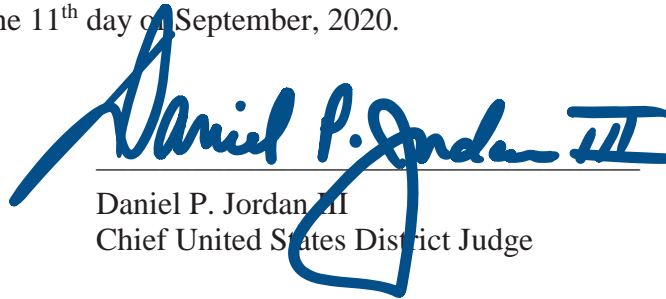
7. All pre-trial detainees must be taken to the appropriate holding facility as determined by the United States Marshals Service (USMS), or its agents or designees, for medical screening before appearing in court for any proceeding. The presiding judge must be notified before transport to the courthouse if the detainee exhibits risk factors.

8. The USMS, in conjunction with the Court Security Officers (CSOs), shall have the authority to screen any visitor to a federal courthouse within the district and prevent them from entering if they present a risk of infecting others. The USMS is directed to continue utilizing the screening procedures it previously implemented. If an individual is stopped, the USMS or CSO must immediately notify the presiding officer by telephone. This could include

the presiding federal judge, the Clerk of Court, the presiding bankruptcy trustee, the Chief Probation Officer, United States Attorney, or head of any other building tenant. The presiding officer will then have authority to decide how the matter should be handled, including entry with appropriate precautions.

The Court recognizes that it is impossible to cover all possible contingencies and that the situation remains fluid. This Order is therefore designed to give the presiding officers flexibility to address issues as they arise while implementing necessary safeguards. This Order remains in place until further order of this Court.

SO ORDERED, this the 11th day of September, 2020.



Daniel P. Jordan III
Chief United States District Judge