

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:
CORONAVIRUS/COVID-19 PANDEMIC

**ADMINISTRATIVE ORDER
NO. 2020-20**

FURTHER CONTINUANCE OF JURY TRIALS AND
EXCLUSION OF TIME UNDER THE SPEEDY
TRIAL ACT

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ROSLYNN R. MAUSKOPF, Chief Judge

The COVID-19 pandemic has had an extraordinary impact on this District and the operations of this Court, as set forth in this Court's prior Administrative Orders Nos. 2020-06, 2020-11, 2020-15, and 2020-15-1. The Court hereby incorporates those Administrative Orders by reference, and adopts its previous findings as set forth therein.

The Court continues to monitor the circumstances related to the ongoing COVID-19 pandemic. The public health emergency has not abated. To date, the Eastern District of New York continues to have the highest number of documented cases of and fatalities from COVID-19 of any judicial district in the nation.¹ While declining significantly from their peak, new cases and additional fatalities continue, as does the significant risk that the virus will spread and resurge.

The ongoing public health emergency continues to cause significant disruption throughout this District to date, including, but not limited to, the following: restrictions on non-essential travel; significant reductions in mass transit and continuing concerns about its safe use; limits on the size of gatherings and the need to maintain social distancing and wear face coverings in public; the continued closure of certain businesses, offices, schools, childcare facilities, summer camps, and other public and private institutions and facilities; and displacement of district residents.

Federal, state and local officials have promulgated multi-phased plans to gradually restore services and re-open businesses and other public and private facilities while minimizing the risk to public health. The "Opening Up America Again" guidelines, announced by the White House in conjunction with the Centers for Disease Control and Prevention,² provide that

¹ <https://covid-19-judiciary-tf-aousc.hub.arcgis.com/datasets/us-districts-in-circuits-with-confirmed-covid-19-cases> (last visited June 14, 2020).

² <https://www.whitehouse.gov/openingamerica/> (last visited June 14, 2020)

vulnerable individuals at higher risk of contracting COVID-19 should continue to stay at home until the final phase, with additional precautions taken by family members of vulnerable individuals to avoid putting them at risk. Other measures proposed for each phase include maximizing telework, strict social distancing, and limits on the size of gatherings. The “Federal Judiciary COVID-19 Recovery Guidelines”³ mirror this approach, recognizing that members of the court staff, judges, lawyers, litigants, defendants, jurors, witnesses, and other participants in court proceedings will likely fall into this high-risk group, and proposing a gradual phase-in of court operations only after implementing sufficient health and safety measures to help minimize the spread of COVID-19 in courtrooms, public areas, and court work spaces.

Pursuant to “New York Forward,” the multi-phased, regional re-opening plan for New York State,⁴ New York City entered Phase One only this week, and many businesses, professional offices, including law offices, and childcare and other facilities remain closed. It is uncertain when New York City will enter Phase Two, or at what pace it will proceed through each phase, given the unique challenges posed by its population density, exceptionally large commuter workforce, and dependence on mass transit. While Long Island has progressed to Phase Two, many jurors, lawyers, litigants, witnesses and other participants in court proceedings in the Central Islip courthouse live and work in New York City; are still subject to continuing restrictions imposed in the City; and will continue to face significant difficulty and risk when traveling, particularly via the region’s public transportation network.

Even as re-opening phases begin and progress, the ongoing public health emergency, and the need to employ measures to minimize the spread of COVID-19, will continue to have profound and material impacts on court operations including, but not limited to: the ability to summon and obtain a diverse and representative pool of prospective jurors for both petit and grand jury service; the need to limit the size of gatherings and maintain social distancing, which has a significant impact on jury selections and other court proceedings; the ability of court staff, lawyers, jurors, witnesses and others to travel safely, particularly by public transportation; continued restrictions on the movement of defendants between detention facilities and the Court; limited telephone and video communication between defendants in custody, their attorneys, and the Court; and the need to conduct proceedings remotely, using video and telephone conferencing, including conducting criminal proceedings pursuant to the CARES Act. In addition, regular canvasses of the individual grand jurors sitting in this District has revealed that only one of the several grand juries already empaneled has recently mustered a quorum, and no other empaneled grand juries will be able to so do prior to June 22, 2020.

Upon consideration of the current situation relating to the serious, ongoing public health emergency in this District created by the COVID-19 pandemic, and in order to continue to protect public health, limit the size of public gatherings and travel, and prevent the spread of the virus, it is HEREBY ORDERED:

³ <https://www.uscourts.gov/news/2020/04/27/courts-begin-consider-guidelines-reopening> (last visited June 14, 2020)

⁴ <https://forward.ny.gov/> (last visited June 14, 2020)

1. The United States District Court for the Eastern District of New York will remain open, but with limited operations in both Brooklyn and Central Islip to support essential functions in criminal and civil matters, and in a manner to ensure the safety, health and welfare of the public and court staff, and to promote the precautions set forth in both national and state orders.
2. All civil and criminal petit jury selections and jury trials, and all new grand jury selections, scheduled before **September 14, 2020**, are continued pending further Order of the Court.
3. Compliance with all trial-specific deadlines in civil and criminal cases shall be at the discretion of the assigned judges.
4. Individual judges presiding over civil and criminal proceedings may take such actions consistent with this Order as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties. Judges are strongly encouraged to conduct court proceedings by telephone or video conference where practicable, including pursuant the CARES Act, and to adjourn matters or deadlines, or stay litigation, where in-person meetings, interviews, depositions, or travel would be necessary to prepare for any such proceedings. No in-person bench trials or evidentiary hearings may be scheduled without consultation with the Chief Judge.
5. The Court is cognizant of the right of criminal defendants to a speedy and public trial under the Sixth Amendment, and the particular application of that right in cases involving defendants who are detained pending trial. Any motion by a criminal defendant seeking an exception to this order in order to exercise that right should be directed to the District Judge assigned to the matter in the first instance; provided, however, that no such exception may be ordered without consultation with the Chief Judge.
6. Due to the ongoing exigent circumstances created by the COVID-19 pandemic as outlined herein, including the Court's reduced ability to obtain an adequate spectrum of jurors due to concerns regarding health and safety, and the effect of the above public health restrictions and recommendations on the ability of jurors, defendants, counsel, witnesses, and court staff to safely travel and be present in court, the time period from **June 15, 2020 to September 14, 2020** is hereby excluded under the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*, for all trials and other conferences and proceedings in criminal cases, as the Court finds that the ends of justice served by such continuances to protect public health and safety outweigh the best interests of the public and the defendant in a speedy trial pursuant to 18 U.S.C. § 3161(h)(7)(A).

These same concerns, as well as the unavailability of multiple grand juries empaneled in this District arising from the inability to muster a quorum prior to June 22, 2020, and the suspension of the selection of new grand jurors, make it “unreasonable to expect return and filing of [an] indictment within the period specified in section 3161(b).” 18 U.S.C. § 3161(h)(7)(B)(iii). As such, the 30-day time period for filing an indictment under 18 U.S.C. § 3161(b), which previously had been tolled through June 8, 2020 by

Administrative Order 2020-15-1, is further tolled *nunc pro tunc* from June 8, 2020 until **July 1, 2020**. See also 18 U.S.C. § 3161(h)(7)(A).

7. The assigned District Judge in any criminal case for which a trial or other conference or proceeding is postponed or continued under this Order may make any additional findings and exclude additional time under the Speedy Trial Act, as necessary and appropriate, in scheduling any new date for any trial or other conference or proceeding in a criminal case.
8. Due to the ongoing exigent circumstances created by the COVID-19 pandemic as outlined herein, the Court finds that “extraordinary circumstances,” as that term is used in Federal Rule of Criminal Procedure 5.1(d), exists. Accordingly, the Magistrate Judge may extend the time limits required under the Rule upon a showing that justice requires the delay.
9. Initial appearances and arraignments shall continue to take place in the ordinary course, or where practicable or necessary, be conducted remotely pursuant to procedures established by the Court, including pursuant to the CARES Act. Detention and bail review proceedings shall be scheduled with the approval of the assigned District Judge or Duty Magistrate Judge.
10. The Clerk's Office, the District Executive's Office, Pre-Trial Services, the Probation Department, and all other District Court services continue to operate under modified hours and procedures.
11. All Administrative Orders related to the COVID-19 pandemic shall continue in force and effect by their terms. Further orders addressing court operations in the exigent circumstances created by the COVID-19 will be issued as circumstances warrant.

SO ORDERED.

Dated: Brooklyn, New York
June 15, 2020



ROSLYNN R. MAUSKOPF
Chief Judge