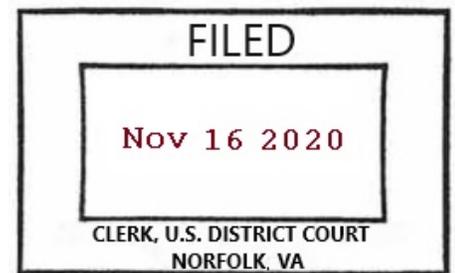


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA



In re:
COURT OPERATIONS UNDER THE EXIGENT
CIRCUMSTANCES CREATED BY THE OUTBREAK
OF CORONAVIRUS DISEASE 2019 (COVID-19):
TEMPORARY SUSPENSION OF CRIMINAL JURY
TRIALS

Case No. 2:20mc7

General Order No. 2020-22

The United States District Court for the Eastern District of Virginia has continued to closely monitor the outbreak of Coronavirus Disease 2019 (COVID-19), as well as the developing guidance from the Centers for Disease Control and Prevention (CDC), and local health authorities. Beginning in March of this year, the Court implemented a staged response to the ongoing public health emergency, thereby limiting operations and in-person hearings in our Courthouses in order to protect court employees and staff, litigants, counsel, other court users, and members of the public. In May, the Court began requiring the wearing of masks and social distancing in all courthouses. After a state-wide "stay at home" order issued by the Governor of Virginia was lifted, this Court began increasing Court operations in mid-June. All jury trials, however, remained suspended throughout the summer in light of the additional COVID-19 exposure risk associated with such proceedings. After months of careful planning, to include the development of a modified jury trial process using retrofitted

courtrooms that allow for sufficient social distancing throughout the trial process, criminal jury trials resumed in all four Divisions of this Court in September of this year, a step taken after consideration of this Court's constitutional obligations, defendants' speedy trial rights, and the need to protect the safety of all persons involved in the jury trial process, to include summonsed jurors ordered to appear in Court in the midst of a deadly pandemic.¹

While multiple criminal jury trials have now been successfully completed in our District, conditions in the community have deteriorated over the last several weeks in our District, the Commonwealth of Virginia, and across the United States. A "gating criteria" analysis consistent with recommendations from the Administrative Office of the United States Courts reveals that all three gating criteria in our District (Facility Exposure Risk, Community Case Analysis, and Community Action Assessment) are clearly trending in the wrong direction.

First, in the last two weeks, there has been a significant increase in the number of court personnel and court users needing to quarantine due to actual or likely community exposure to COVID-

¹ In light of speedy trial concerns and the Court's reduced ability to safely conduct multiple simultaneous jury trials, civil jury trials remain suspended indefinitely. See Gen. Order 2020-16.

19. These incidents include individuals providing security for the courthouses and its occupants, those involved in overseeing courthouse operations, trial operations, information technology, maintenance, as well as jurors/potential jurors, with such incidents occurring in all four Divisions of this Court (Alexandria, Richmond, Norfolk, and Newport News).

Second, case counts and hospitalizations across Virginia have sharply increased during the last several weeks, with COVID-19 case counts at their highest level since the pandemic began, and the number of people hospitalized in Virginia with confirmed COVID-19 at its highest level since early May. Notably, statewide hospitalizations of confirmed COVID-19 cases have increased more than 40% over the last two weeks. The "percent positivity" across Virginia, and across our District, has similarly seen a sharp increase, further confirming that spread of the deadly disease is increasing. Specifically, multiple cities/counties immediately surrounding the locations of the Courthouses in our District are now experiencing positivity above 8%, with one county over 9%.² Just three weeks ago, all localities surrounding our Courthouses were under 6% positivity, and the majority were under 4.5%. Notably, public health experts have cautioned the Court that the relevant metrics tend to lag behind current conditions, suggesting

² In May, the World Health Organization identified a 5% positivity rate as the target level that should be reached before reopening.

that ongoing community spread is even greater than that reflected by available data metrics.

Third, over the last week, there has been a rapidly evolving response by multiple states to what is best described as a disturbing nationwide spike in COVID-19 cases, hospitalizations, and deaths. Most relevant to our District, on Friday, November 13, 2020, the Governor of Virginia issued an amended executive order that: (1) limits public and private indoor and outdoor gatherings to 25 people (down from the previous limit of 250 people); (2) expands the mask mandate in Virginia; (3) strengthens enforcement of mask requirements, social distancing rules, and enhanced cleaning requirements in essential businesses; and (4) adopts an on-site alcohol curfew for restaurants and other dining establishments. Moreover, during the last week, multiple public schools within our District have announced their intention to temporarily revert to entirely virtual instruction.

In addition to the above, late last week this Court conducted a teleconference with local public health officials to discuss the status of the COVID-19 pandemic in our District. Such conference included an analysis of local, regional, and statewide trend lines, to include multiple metrics from each Division of this Court. The local Virginia health experts, and experts across the country, warn that conditions are expected to further deteriorate over the next several weeks and months in light of anticipated holiday

gatherings and the fact that colder weather is expected to increase the rate of community spread of COVID-19.

After considering all of the above, and consistent with actions that other U.S. District Courts have taken during the last week, this Court finds that it is again appropriate to take an incremental step back and reduce Court operations in order to protect the public and to ensure that critical court operations will not be compromised through a complete shutdown. Accordingly, effective today, November 16, 2020, all criminal jury trials are hereby suspended for a period of two months, **absent further Order from this Court**, with criminal jury trials to resume on **January 19, 2021**.³ Such pause in jury trial operations is necessitated by worsening local conditions and trend lines as well as expert analysis concluding that conditions will continue to worsen during the next two months as more people gather in indoor enclosed spaces. When criminal jury trials resume, scheduling priority **SHALL be given** to trials with any defendants held in custody, with consideration also given to the length of time that cases have been pending.

³ Having a projected date to resume criminal jury trials, rather than issuing multiple orders suspending trials for shorter spans, has the added benefit of allowing counsel, litigants, witnesses, and jurors the advance notice necessary to prepare for trial. That said, in light of speedy trial considerations, the two-month suspension will be shortened by the Court should conditions markedly improve against the consensus predictions of health experts.

While no further reduction in Court operations is ordered at this time, should conditions continue to deteriorate, the Court will further reduce operations as conditions dictate. At this time, efforts should be made by all judges and court personnel to reduce the number of individuals gathered (masked and socially distanced) for any live proceeding, and judges are encouraged to continue utilizing video teleconferencing to the greatest extent possible. While the public must continue to have access to public court proceedings, **no hearing or other proceeding in our Courthouses should have more than twenty-five people present in the same room**, absent prior authorization from the Chief Judge.

The decision to suspend criminal jury trials Districtwide for two months was made after careful consideration of defendants', and the public's, speedy trial rights, and after consultation with public health experts and with judges of each Division of this Court who are familiar with pandemic conditions in their respective geographical areas. As noted in prior General Orders, this Court's unwavering focus during the last several months of the pandemic has been to ensure the safety of our jurors and trial participants, while at the same time ensuring that each defendant has a fair trial, with a focused jury, after having had an adequate opportunity to work with his or her attorney to prepare a defense. Consistent with prior General Orders issued during the pandemic, the Court notes that case-specific speedy trial findings will

likely prove necessary for each criminal case with a postponed trial; however, because the pandemic reaches all cases, and impacts all prospective jurors and defendants, the Court hereby finds that, in addition to the periods excluded by prior General Orders, the period of November 16, 2020, through and including January 18, 2021, is hereby excluded from the statutory speedy trial calculation pursuant to 18 U.S.C. § 3161(h)(7)(A). The Court makes such "ends of justice" findings after balancing the factors discussed in 18 U.S.C. § 3161(h)(7)(B), and the Court finds that the exclusion of such time from the speedy trial period is necessary to balance the health and safety of jurors and prospective jurors, court employees, criminal defendants, counsel, judges, and the public with the constitutional responsibility to continue federal court operations during the COVID-19 outbreak. In concluding that this Court is currently unable to safely conduct criminal jury trials, the Court has carefully considered the Governor's recent order and its impact on the jury's ability to focus throughout trial at a time when the risk of community exposure is increasing so dramatically, as well as practical concerns regarding defense counsels' difficulty in adequately preparing for trial during a time of increased community spread, and concerns associated with the difficulties of safely bringing out-of-town witnesses to our Courthouses (to include in-custody witnesses, expert witnesses, and others). It is therefore the

undersigned judge's conclusion that the interests of justice are best served by resuming criminal jury trials no earlier than **January 19, 2021.**

It is so ORDERED.

/s/ 

Mark S. Davis
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
November 16, 2020