

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:	:	
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TWELFTH EXTENSION OF ADJUSTMENTS TO COURT OPERATIONS DUE TO THE EXIGENT CIRCUMSTANCES CREATED BY COVID-19	:	STANDING ORDER
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This Standing Order is issued in response to the ongoing COVID-19 pandemic, which continues to impact Court operations in this district. Since March 13, 2020, this Court has issued a series of Standing Orders modifying or suspending certain Court operations due to the exigent circumstances created by the COVID-19 pandemic in order to protect public health and safety, including the safety of Court personnel and all those entering courthouses and Court locations in this district. Pursuant to those Standing Orders, jury trials were suspended in all but a few criminal test cases from March 13, 2020, through May 3, 2021, and resumed on a limited basis the week of May 3, 2021.

Throughout the pandemic, the Court has continued to closely monitor the COVID-19 outbreak in this district and the guidance available from government officials and public health authorities at the Federal, State, and local levels in order to make appropriate adjustments to operations. On August 31, 2020, following a period of sustained improvement in the conditions with regard to COVID-19 in this district and after extensive planning, the Court authorized the resumption of criminal jury trials on a limited basis pursuant to its Initial Guidelines for the Reinstitution of Jury Trials, which include numerous precautions to allow jury trials to proceed safely and in accordance with public health guidance. As explained in the Court’s prior Standing Orders, which are incorporated here, the need for these health and safety precautions limits the Court’s capacity to hold criminal jury trials, which require the summoning of large numbers of

prospective jurors and the use and staffing of multiple courtrooms for each jury selection and trial in order to limit the number of people in a room at a time and to ensure adequate space for physical distancing. Following the resumption of jury trials in September 2020, the Court remained in the initial test period for jury trials, during which only one criminal jury trial could be conducted at a time. In September and October 2020, a total of four criminal jury trials were held. All other trials remained suspended.

In November 2020, conditions with regard to COVID-19 in this district and throughout Pennsylvania materially worsened, leading the Court to again suspend all civil and criminal jury trials. Jury trials remained suspended through May 3, 2021.

The most recent Standing Order, issued on March 30, 2021, authorized the resumption of jury trials on a limited basis beginning the week of May 3, 2021. The March 30, 2021, Standing Order contemplated that, when jury trials resumed, the Court would re-enter the initial test period for jury trials and that, due to the health and safety protocols necessary for the conduct of jury trials, only one criminal jury trial would be conducted at a time, as outlined in the Initial Guidelines for the Reinstitution of Jury Trials. The Court also authorized the resumption of civil jury trials on a limited basis. Civil jury trials are subject to health and safety protocols similar to those applicable to criminal jury trials, pursuant to the more recently issued Guidelines for the Reinstitution of Civil Jury Trials. Because civil trials require the summoning and impaneling of fewer prospective jurors than criminal trials, however, they do not require the same commitment of space and staff as is necessary to maintain health and safety protocols in criminal cases.

When the March 30, 2021, Standing Order was issued, the Court anticipated that it would remain in the initial test period for jury trials through at least June 7, 2021, and that, during this period, criminal trials would be scheduled in accordance with a master trial list developed by the

Court in consultation with the U.S. Attorney's Office and the Federal Community Defender Office in this district. The Court further found that for those criminal cases that could not be tried during the initial test period consistent with the health and safety protocols and limitations necessary to conduct jury trials during the pandemic, the additional time period from May 3, 2021, through June 7, 2021, would be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), because the ends of justice served by continuances that would be necessary in those cases outweighed the best interest of the public and each defendant in a speedy trial, as the resumption of jury trials without the required health and safety protocols and limitations prior to June 7, 2021, would jeopardize public health and safety and pose significant risks of exposure and transmission of the coronavirus to trial participants, which would make continuation of a trial impossible or result in a miscarriage of justice. This period of exclusion was in addition to the period of exclusion previously granted for the time period from March 13, 2020, through May 3, 2021.

Since the March 30, 2021, Standing Order was issued, conditions with regard to COVID-19 in this district have continued to improve. Case counts and positivity rates have declined, and many restrictions have recently been lifted in both Pennsylvania and Philadelphia.

Despite these improvements, there remains a need for caution at this time. The national emergency initially declared by the President with respect to COVID-19 on March 13, 2020, and extended on February 24, 2021, remains in effect. The finding of the Judicial Conference of the United States that emergency conditions due to the COVID-19 national emergency have materially affected and continue to materially affect the functioning of the federal courts has not been terminated. In Pennsylvania, the Governor renewed his disaster emergency proclamation for the COVID-19 pandemic on May 20, 2021, finding that the COVID-19 pandemic continues to be of

such magnitude and severity that emergency action is necessary to protect the health, safety, and welfare of affected citizens in Pennsylvania.

While COVID-19 vaccination rates have increased significantly in recent months as vaccines have become more widely available, a substantial portion of the adult population in this district is not yet fully vaccinated, including more than half of the adult population in Philadelphia. In addition, more than half of those detained in the Federal Detention Center in Philadelphia remain unvaccinated. The Centers for Disease Control and Prevention (CDC) continues to advise those who are not fully vaccinated to take steps to protect themselves and slow the spread of the disease, including by wearing masks in public, maintaining at least six feet of physical distance from those outside their households, and avoiding crowds, among other precautions.

In Philadelphia, masks must be worn in all indoor settings whenever people from more than one household are present, regardless of physical distancing or vaccination status. Outside of Philadelphia, the Pennsylvania Department of Health has lifted its mask mandate for those who have been fully vaccinated in many settings, consistent with CDC guidance, but masks are still required in indoor settings for those who have not been fully vaccinated. Throughout Pennsylvania, masks are also still required for all people, regardless of vaccination status, in certain crowded settings such as on planes, buses, trains, and other forms of public transportation.

As the Court proceeds with the resumption of jury trials, it remains critical that the Court take reasonable steps to ensure that the conduct of jury trials in a pandemic environment will provide reasonable and prudent consideration of the public health and the health of all trial participants while providing accused defendants with the full range of trial rights accorded by law in a setting that provides for the full and appropriate presentation and consideration of the evidence and arguments. Based on the current public health situation and guidance, the Court remains in

Phase Two of its COVID-19 Reopening Guidelines with numerous precautions in place. The Standing Orders requiring the wearing of masks in all common or public areas of EDPA courthouses remain in effect, and physical distancing signage and markers remain in place. While the Court remains in Phase Two, it will also remain in the initial test period for jury trials under the Initial Guidelines for the Reinstitution of Jury Trials, during which only one criminal trial may be conducted at a time.

The Court expects that, as conditions with regard to COVID-19 in this district continue to improve, the Court will move to Phase Three of its COVID-19 Reopening Guidelines, enabling it to expand current operations. Due to the ongoing need for health and safety precautions, however, the Court anticipates that only a limited number of criminal jury trials will be held through September 7, 2021. During this period, trials will continue to be scheduled on a staggered basis in accordance with the master list maintained by the Court or based on such other criteria as may be developed by the Court.

Considering the foregoing, the Court concludes that, as jury trials proceed on the limited basis described above, with the current health and safety protocols and limitations in place, it is essential that the Court at the same time find and conclude that resulting trial delays are excludable time under the Speedy Trial Act, as proceeding otherwise will result in an untenable situation requiring multiple trials to be scheduled to occur simultaneously. That would be contrary to applicable public health guidance, would negatively impact jurors, Court personnel, counsel, and witnesses, and would likely also interfere substantially with the trial process, including an accused defendant's right to a fair trial.

It is therefore ORDERED that the time period from June 7, 2021, through the date trial commences consistent with the applicable health and safety protocols and limitations or September

7, 2021, whichever is earlier, shall be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), in all criminal cases in this district. The Court finds the ends of justice served by continuances that will be necessary in those cases outweigh the best interest of the public and each defendant in a speedy trial because, given the ongoing circumstances regarding COVID-19 in this district, the Court's health and safety protocols and limitations remain necessary at this time and the resumption of jury trials without these health and safety protocols and limitations prior to September 7, 2021, would jeopardize public health and safety and pose significant risks of exposure and transmission of the virus to trial participants, which would make continuation of a trial impossible or result in a miscarriage of justice. This period of exclusion is in addition to the period of exclusion previously granted for the time period from March 13, 2020, through June 7, 2021. The Court may extend the period of exclusion by further order as circumstances may warrant, and the presiding judge in any criminal case for which trial will be continued based on this Standing Order may make any additional findings and exclude additional time, as necessary and appropriate, regarding the scheduling of any new date for trial. Any motion by a criminal defendant seeking an exception to this Standing Order for the purpose of exercising the defendant's speedy trial rights shall be referred to the Chief Judge for disposition.

Except as modified herein or by other Standing Orders issued since May 29, 2020, the May 29, 2020, Standing Order remains in effect.

IT IS SO ORDERED.

/s/ Juan R. Sánchez
Juan R. Sánchez
Chief Judge

Date: June 7, 2021