

**MEANINGFUL ACCESS TO COURT PROCEEDINGS FOR
VICTIMS OF PAN AM FLIGHT 103 ACT**

This legislative proposal would instruct and provide statutory authority for the federal district court overseeing the criminal case against alleged Pan Am Flight 103 bombmaker Abu Agila Mohammed Mas'ud Kheir Al-Marimi to provide victims of the Pan Am Flight 103 bombing remote video and telephonic access to proceedings in the case.

Sec. [XXX]. Remote access to court proceedings for victims of the 1988 bombing of Pan Am Flight 103 over Lockerbie, Scotland

(a) In general.—During fiscal year 2023 and each succeeding fiscal year, notwithstanding any provision of the Federal Rules of Criminal Procedure or other law or rule to the contrary, in order to permit victims of crimes associated with the bombing of Pan Am Flight 103 to access court proceedings in the criminal case against Abu Agila Mohammed Mas'ud Kheir Al-Marimi and any co-conspirators subsequently charged and prosecuted in U.S. courts for crimes related to the 1988 bombing of Pan Am Flight 103, the district court in such case shall order, subject to the terms of this section, that remote video and telephonic access to proceedings in the case be made available to such victims. Remote access shall be made available to victims irrespective of the victim's location.

(b) Definition.—**(1)** As used in this section and subject to paragraph (2), the term “victims of crimes associated with the bombing of Pan Am Flight 103” means any individual—

(A) who suffered direct or proximate harm as a result of the bombing of Pan Am Flight 103 that occurred over Lockerbie, Scotland, on December 21, 1988, and was present at or near the scene of the bombing when it occurred, or immediately thereafter; or

(B) who is the spouse, legal guardian, parent, child, brother, sister, next of kin, or other relative of, or who is determined by the district court to be an individual who possesses a relationship of similar significance to an individual described in subparagraph (A) or an individual otherwise described in this subsection.

(2) The term defined in paragraph (1) does not include an individual who participated or conspired in the crimes associated with the bombing of Pan Am Flight 103.

(c) District court discretion.—Nothing in this section shall be construed to eliminate or limit the district court's discretion to control the manner, circumstances, or availability of remote video or telephonic transmissions where necessary to control the courtroom or protect the integrity of court proceedings or the safety of parties, witnesses, or other participants in the proceedings.

Background and Analysis

On December 21, 2020, the U.S. Department of Justice publicized a criminal complaint charging Abu Agila Mohammad Mas'ud Kheir Al-Marimi (“Al-Marimi”) with destruction of aircraft resulting in death, and destruction of a vehicle used in foreign commerce by means of an explosive resulting in death. These criminal charges stem from Al-Marimi’s alleged role in building the bomb that detonated on Pan Am Flight 103 over Lockerbie, Scotland, on December 21, 1988, killing 270 people. In late 2022, a federal grand jury returned an indictment on the same charges as the criminal complaint, and, following his lawful transfer from Libyan custody to U.S. custody, Al-Marimi made his initial appearance before a magistrate judge in the U.S. District Court for the District of Columbia.¹

On February 9, 2023, the government filed an unopposed motion (Attachment A) requesting that the Court provide victims of the Pan Am Flight 103 bombing with access to a listen-only telephone line through which they could access courtroom proceedings. The government grounded its motion in the Crime Victims’ Rights Act (“CVRA”), which provides, in relevant part, that crime victims have “the right not to be excluded from any [] public court proceeding.” 18 U.S.C. § 3771(a)(3). The Court denied the government’s motion, holding that no statute or case law would authorize the requested accommodation.

The government had filed its motion in consideration of victims who had expressed, and continue to maintain, concerns about their ability to meaningfully access the court proceedings against Al-Marimi. Of the 270 people killed in the bombing, 190 were U.S. citizens from at least 12 States, 43 were U.K. nationals, and the remaining killed in the attack included nationals from nineteen other countries: Argentina, Belgium, Bolivia, Canada, France, Germany, Hungary, India, Ireland, Israel, Italy, Jamaica, Japan, Philippines, South Africa, Spain, Sweden, Switzerland, and Trinidad and Tobago. Accordingly, victims of the bombing and their surviving family members are located across the United States, the United Kingdom, and in numerous countries around the world. Given the amount of time that has passed since the bombing, a significant portion of surviving victims and next of kin are elderly or of advanced age and are physically unable to travel to Washington, D.C., to attend the court proceedings. This combination of advanced age and geographic distance and dispersion from Washington, D.C., means that many victims face significant obstacles to obtain meaningful access to the court proceedings.

Furthermore, the U.S. investigation into the bombing has been characterized by significant international cooperation and exchanges of evidence with law enforcement authorities from more than a dozen countries, including many whose victim nationals maintain significant interests in access to the U.S. proceedings against Al-Marimi. In particular, the Scottish government, including Police Scotland and the Crown Office and Procurator Fiscal Service, have provided extraordinary support and contributions to the joint investigation over many decades, including by providing access to evidence used in Scotland’s prosecution of other individuals involved in carrying out the bombing. During Scottish criminal proceedings held at Camp Zeist in the Netherlands in 2000-2001 against others accused of planning and executing the bombing,

¹ *United States v. Abu Agila Mohammad Mas'ud Kheir Al-Marimi*, No. 22-cr-00392 (D.D.C. November 29, 2022).

Scottish victims and victim nationals of other countries affected by the attack, including U.S. victims, were provided meaningful access to the proceedings through remote video feeds made available to victim family members in Scotland and the United States.

In view of the district court's denial of the government's motion and the imperative of ensuring that U.S. and international victims of the Pan Am Flight 103 bombing are afforded meaningful access to court proceedings in the case pending against Al-Marimi, this legislation provides statutory authority and instruction to the district court to order and ensure that remote video and telephonic access to the trial proceedings be made available to victims.

This legislation is modeled upon § 203 of Public Law 107-206 (Attachment B), which authorized the District Court for the Eastern District of Virginia to provide victims of the terrorist acts of September 11, 2001, with access to a closed-circuit television feed of the trial proceedings in the criminal case against now-convicted September 11th conspirator Zacarias Moussaoui. The legislation for the Moussaoui trial provides a clear precedent for the present legislation: a one-time statutory authorization of remote access to courtroom proceedings for a specific criminal case. This legislation also draws upon local practice and local rules promulgated by the U.S. District Court for the District Columbia to make available to the press and public remote access to court proceedings during the COVID-19 pandemic pursuant to statutory authority provided in the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"), H.R. 748, enacted on March 27, 2020, and the declaration of a national emergency by the President of the United States with respect to the COVID-19 pandemic.²

² In Re: Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings, Standing Order No. 20-17 (BAH) (D.D.C. March 30, 2020) (Howell, C.J.) (Attachment C); In Re: Public and Media Access to Judicial Proceedings During COVID-19 Pandemic, Standing Order No. 20-20 (BAH) (D.D.C. April 8, 2020) (Howell, C.J.) (Attachment D).

Section-by-Section Analysis

The proposed legislation would authorize and instruct the district court in the criminal case against Abu Agila Mohammed Mas'ud Kheir Al-Marimi to provide remote video and telephonic access to court proceedings to victims of the Pan Am Flight 103 bombing, consistent with past Congressional action permitting remote access for victims of terror crimes.

Section XXX(a)

Subsection (a) authorizes and instructs the district court to make available to victims of crimes associated with the bombing of Pan Am Flight 103, as defined in subsection (b), remote video and telephonic access to court proceedings in the case and any case subsequently brought against a co-conspirator in the bombing, subject to certain terms and conditions detailed in this subsection and in subsection (b). This subsection also clarifies that the authorization and instruction to the trial court is subject to the terms and restrictions of subsection (c), which vests additional discretion in the district court to control the manner, circumstances, and availability of remote video and telephonic transmissions in order to control the courtroom and protect the integrity of the court proceedings.

Section XXX(b)

Paragraph (1) of subsection (b) defines “victims of crimes associated with the bombing of Pan Am Flight 103”, as used in subsection (a), to assist the district court’s determination of which individuals shall be granted access to the remote video and telephonic transmission of court proceedings. Victims who will be given video and telephonic transmission of the trial proceedings include: (1) individuals who suffered direct or proximate physical harm from the Pan Am Flight 103 bombing; and (2) other individuals with a significant relationship to a victim who suffered direct or proximate physical harm from the bombing.

Paragraph (2) of this subsection clarifies that individuals who conspired or participated in the Pan Am Flight 103 bombing may not qualify as a victim, even if they otherwise satisfy the requirements of paragraph (1).

Section XXX(c)

Subsection (c) ensures that the district court shall retain significant discretion to determine how to implement the instruction in subsection (a). In recognition of the trial court’s interests in controlling the courtroom and protecting the integrity and safety of the proceedings, this subsection provides that the district court’s decisions regarding the manner, circumstances, and availability of the video and telephonic transmission shall be entitled to substantial deference.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No. 22-cr-392 (DLF)
	:	
	:	
ABU AGILA MOHAMMAD	:	
MAS’UD KHEIR AL-MARIMI,	:	
	:	
Defendant.	:	

**GOVERNMENT’S MOTION FOR ALTERNATIVE
PROCEDURES UNDER THE CRIME VICTIMS’ RIGHTS ACT**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, hereby respectfully moves this Court to find this case is a “public court proceeding” involving “multiple crime victims” pursuant to 18 U.S.C. § 3771(d)(2) (the Crime Victims’ Rights Act or “CVRA”). Accordingly, the government requests the Court approve (1) an alternative victim notification procedure, (2) an alternative procedure to access the court proceedings by utilizing a dedicated listen-only telephone line for the victims, and (3) a procedure to allow the victims the right to be reasonably heard at court proceedings involving release, plea, sentencing, or any parole proceeding, as outlined below, as “a reasonable procedure to give effect” to the rights guaranteed by the CVRA. *Id.*

FACTUAL BACKGROUND

On December 21, 1988, Pan Am Flight 103 exploded over Lockerbie, Scotland, while *en route* from London’s Heathrow Airport to John F. Kennedy International Airport in New York City. The explosion resulted in the deaths of 270 people, 259 of whom were aboard the flight, with another 11 persons killed by debris falling to the ground. The victims included citizens of 21 countries, including 190 Americans and 43 citizens of the United Kingdom. Among those who

perished were 35 Syracuse University students returning from studying abroad, five United States service members, and employees of the Department of Justice and Central Intelligence Agency.

The investigation into the explosion revealed that it was caused by a destructive device or improvised explosive device (“IED”) that was placed inside a copper-colored suitcase stored within the aircraft’s forward cargo compartment. The government anticipates that its evidence will show that the Defendant built the bomb that brought down Pan Am Flight 103. Forensic analysis of items recovered from the debris that were identified as contained inside the same suitcase as the IED resulted in the identification of Abdel Baset Al-Megrahi (“Al-Megrahi”) as having purchased those items from a shop in Malta. Al-Megrahi was believed to be a member of the External Service Organization (“ESO”), the Libyan intelligence service. Travel records further revealed that Al-Megrahi and other ESO personnel traveled between Malta and Libya in the months surrounding December 1988, including on the day of the bombing. The investigation further revealed that on December 21, 1988, while passengers and baggage were being boarded on Air Malta Flight KM-180 that was to travel from Malta to Frankfurt, West Germany, Al-Megrahi, who traveled under the alias “Abusamad,” and the Defendant checked in to Libyan Arab Airlines Flight LN-147 bound for Tripoli, Libya. Passengers and luggage for both Flight KM-180 and Flight LN-147 checked in via adjacent airport gates while both gates were open. The copper-colored suitcase, which contained the IED that the Defendant stands accused of building, had already been placed onto Flight KM-180 with an American aircraft baggage tag placed on it. Thus, the government believes that, as the suitcase with the IED was traveling to Frankfurt on Flight KM-180, Al-Megrahi and the Defendant were safely heading to Tripoli. Upon the bag’s arrival in Frankfurt, it was then loaded onto Pan Am Flight 103A, which traveled to London-Heathrow from Frankfurt, and the IED suitcase was transferred to Pan Am Flight 103 with other baggage for that aircraft at London-

Heathrow. There were no passengers holding tickets for an itinerary for Malta-Frankfurt-Heathrow, and then on to Pan Am Flight 103.

In November 1991, a federal grand jury sitting in the District of Columbia returned an indictment charging Al-Megrahi and another ESO operative, Lamén Khalifah Fhimah (“Fhimah”), on charges including Conspiracy to Commit a Crime Against the United States (18 U.S.C. § 371), Murder of a U.S. National Outside the United States (18 U.S.C. § 2331, subsequently codified at § 2332), Destruction of an Aircraft Resulting in Death (18 U.S.C. § 32), and Destruction of a Vehicle by Means of an Explosive Resulting in Death (18 U.S.C. § 844(i)).

The Scottish Trial

On the same day the indictment was returned in the District of Columbia, Al-Megrahi and Fhimah were charged in Scotland. Both countries then requested extradition of the defendants from Libya, a request which Libya refused. Two months later, in January 1992, the United Nations Security Council unanimously adopted a resolution urging Libya to “provide a full and effective response” to requests by the United States and the United Kingdom for the surrender of the two Libyans linked to the bombing. After seven years of negotiations, the Libyan government surrendered Al-Megrahi and Fhimah to Scottish authorities. Al-Megrahi and Fhimah were tried together before a Scottish court that was physically located in Camp Zeist, The Netherlands (“the Scottish trial”). Approximately 12 years later, the Scottish trial commenced on May 3, 2000, and the court rendered its verdict on January 31, 2001. Al-Megrahi was convicted on 270 counts of murder for his part in the bombing and was sentenced to life imprisonment. Fhimah was acquitted, released, and permitted to return to Libya. As part of its verdict, the Scottish Court pronounced an

explicit finding that the Muamar Qaddafi regime and his ESO intelligence apparatus engineered this act of terror.¹

PROCEDURAL HISTORY

On November 29, 2022, a federal grand jury in the District of Columbia returned a three-count Indictment charging Abu Agila Mohammad Mas'ud Kheir Al-Marimi (the Defendant), a dual citizen of Libya and Tunisia, with the destruction of an aircraft resulting in death, in violation of 18 U.S.C. §§ 32(a)(2), 34, and 2; destruction of an aircraft resulting in death, in violation of 18 U.S.C. §§ 32(a)(1), 34, and 2; and destruction of a vehicle used in foreign commerce by means of an explosive, resulting in death, in violation of 18 U.S.C. §844(i).²

On December 11, 2022, the Defendant was transferred from Libya into the custody of the United States. He made his initial appearance on December 12, 2022, in the U.S. District Court in the District of Columbia in front of the Honorable Magistrate Judge Robin M. Meriweather. The case was set before the Honorable Magistrate Judge Moxila A. Upadhyaya on December 19, 2022, and again on January 10, 2023, for an ascertainment of counsel determination and formal arraignment.

The Defendant moved to continue the January 10, 2023, for more time to retain an attorney. On January 25, 2023, Judge Upadhyaya appointed the Federal Public Defender to represent the

¹ Al-Megrahi was permitted by Scotland to be compassionately released in November 2009 on the basis that he was terminally ill with cancer and only had three months to live. He died in May 2012 in his home in Tripoli, and the U.S. charges against him were abated. The 1991 indictment charging Fhimah and the warrant for his arrest remain active and outstanding. Current information indicates that Fhimah is alive and living in Libya.

² On December 21, 2020, the government unsealed a criminal complaint charging the Defendant with these crimes. An arrest warrant was issued, and the United States lodged an Interpol Red Notice to obtain lawful custody of him. A federal grand jury later returned an Indictment for these charges on November 29, 2022.

Defendant, and the formal arraignment was held on February 8, 2023. The case was assigned to this Honorable Court.

ARGUMENT

The Court should find this case as a “public court proceeding” involving “multiple crime victims” pursuant to 18 U.S.C. § 3771 (CVRA) in order to accommodate the numerous victims around the world.³ Under the CVRA, the families of the Pan Am 103 victims have specific enumerated rights under the CVRA.⁴ Relevant here, the victims have the right: (1) to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused, § 3771(a)(2); (2) not to be excluded from any such public court proceeding, § 3771(a)(3); and (3) to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding, § 3771(a)(4). The CVRA also recognizes that in cases involving large numbers of crime victims, it may be impracticable to accord all of the crime victims the rights identified in Section 3771(a). *See* 18 U.S.C. § 3771(d)(2). In such instances, the CVRA permits the Court to find that the case involves “multiple crime victims,” § 3771(d)(2), and then permits the Court to “fashion a reasonable procedure to give effect” to the CVRA rights. The CVRA does not specify the alternative procedures but provides that alternative procedure shall not “unduly complicate or prolong proceedings.” *Id.*

³ The CVRA does not differentiate between domestic or international victims. The government believes its obligations extend to all victims.

⁴ The act defines a “crime victim” as “a person directly and proximately harmed as a result of the commission of a federal offense . . .” 18 U.S.C. § 3771(e)(2)(A). It goes on to say, in relevant part, “In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim’s estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim’s rights under this chapter...” 18 U.S.C. § 3771(e)(2)(B).

Alternative procedures are appropriate here. The families of the 270 victims killed in the bombing are located in numerous countries around the world and many are elderly or of advanced age. While they are deeply interested in attending the court proceedings, most are physically unable to travel to Washington, D.C. to meaningfully participate in the hearings. Additionally, the COVID-19 pandemic is still ongoing and considered a public health emergency,⁵ creating major obstacles for travel, especially for those who are older or have a greater risk of contracting the virus. Throughout the last 34 years, the families of those 270 victims have followed the developments of this case. With this arrest of the Defendant, there are renewed requests for information about the case and for regular updates.

I. The Government's Proposed Alternative Victim Notification Process

Under 18 U.S.C. § 3771 (c), the government has obligations related to victim notifications:

Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).

In this case, the government will continue to notify victims in its typical process, as outlined here. All victim notification has been and will be provided by a computerized operating system known as the Victim Notification System ("VNS"). After an initial notice was provided by mail, the victims were advised that they will have the option in VNS to receive future notice concerning the case in three ways: (1) VNS operates a Call Center which allows the victim to call an automated system for information on future court hearings, historical court events and details such as charges filed, outcome of charges, the sentence imposed and the custody status for each defendant; (2) VNS allows each victim to view the VNS Internet site which provides victims and family members

⁵ <https://aspr.hhs.gov/legal/PHE/Pages/covid19-11Jan23.aspx>, Renewal of Determination that a Public Emergency Exists, effective January 11, 2023.

the text of all correspondence and any attachments, which includes the same basic information on-line as the Call-Center;⁶ (3) VNS provides an option for victims to receive notice by email for every event that is covered under the CVRA, and such notice replaces the mailing of letters in that they will automatically receive a letter by email.

However, the large number of victims makes the government's compliance with the notification requirements outlined in section 3771(a), (b) and (c) impracticable. As described, there are a large number of victims and in this case, located in 21 countries. There are numerous procedures that the government must follow when notifying victims who are located in foreign countries, and in some cases, the government is prevented from contacting them directly, conflicting with the government's obligations under the CVRA.

The government requests that the Court approve the following alternative process to comply with the rights guaranteed under subsection 3771(a)(2) to reach all the victims who the government cannot contact through VNS. The government will use the U.S. Department of Justice's website for this case (<https://www.justice.gov/usao-dc/attack-pan-am-flight-103>), to issue all required notices. The government will issue a press release informing individuals who believe they may be victims in this case with instructions to access the Justice Department website for more information.

II. The Government's Proposed Alternative Access to Court Proceedings

Under 18 U.S.C. § 3771(a)(3), the CVRA provides that victims have the right to "not to be excluded from any such public court proceeding." As explained above, the age of the case, and the difficulties facing family members with travel due to their advanced age and/or expense and/or the pandemic to the District of Columbia to meaningfully participate in the future court hearings, are

⁶ Each victim has been or will be provided a unique Victim Identification Number (VIN) and a Personal Identification Number so that they can access the Internet site

unique factors necessitating the government's request of the Court. Even if all the victims were able to attend, there would be questionable ability to host such a large group within the courthouse. Moreover, due to the nature of the charges, the government anticipates trials and hearings may include protracted presentation of testimony and evidence from numerous witnesses (*i.e.*, most from multiple countries from around the world).

Given these considerations, the government requests the Court make available a call-in telephone line for the victims to be able to listen to court proceedings in real time. The line would be set up as a listen-only system; the audience would not be able to comment or speak on the line, and a disclaimer would be made at the beginning of court proceedings that this line is intended for victims only. The victims would be able to access the real-time court proceedings as if they were present in the courtroom, without undue delay or interference.

III. The Government's Proposed Procedure to Allow the Victims to be Heard at Statutorily Select Court Proceedings

Under 18 U.S.C. § 3771(a)(4), the CVRA provides that victims have the right to "to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding." As explained above, many of the victims will not be present in the courtroom and will be remotely accessing the proceedings. The government proposes a reasonable procedure by which any victim who wants to be heard at a hearing involving release, plea, sentencing or parole issues will submit a written statement to the government in advance of the hearing, who will then submit those statements to the Court. This would allow the victims their rights afforded under the CVRA, while taking into account the logistical concerns of the number of victims and the physical location of the victims during those hearings. The government will inform the victims of the procedures through VNS and the Department of Justice website.

Counsel for the government notified the defense of this motion and the defense counsel does not oppose the relief requested.

CONCLUSION

Based on the foregoing, the government asserts that it is reasonable for the Court to permit that these unique accommodations be utilized in order for the United States to comply with its legal responsibilities under the CVRA. The government requests that the Court find this to be a case with multiple crime victims, and the Court adopt the following reasonable procedures, which do not unduly complicate or prolong proceedings: (1) the alternative victim notification procedure using the Department of Justice website, (2) the alternative procedure to access the court proceedings by utilizing a dedicated listen-only telephone line for the victims, and (3) the

procedure to allow the victims the right to be reasonably heard at court proceedings involving release, plea, sentencing, or any parole proceeding.

Respectfully submitted,

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SECURITIES AND EXCHANGE COMMISSION

SALARIES AND EXPENSES

For an additional amount for “Salaries and Expenses” to respond to increased needs for enforcement and oversight of corporate finance, \$30,900,000 from fees collected in fiscal year 2002, to remain available until expended.

In addition, for an additional amount for “Salaries and Expenses” for emergency expenses resulting from the September 11, 2001, terrorist attacks, \$9,300,000, to remain available until expended: *Provided*, That the entire amount is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: *Provided further*, That the entire amount shall be available only to the extent an official budget request that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to the Congress.

GENERAL PROVISIONS—THIS CHAPTER

SEC. 201. Funds appropriated by this Act for the Broadcasting Board of Governors and the Department of State may be obligated and expended notwithstanding section 15 of the State Department Basic Authorities Act of 1956, as amended.

SEC. 202. Section 286(e)(3) of the Immigration and Nationality Act (8 U.S.C. 1356(e)(3)) is amended—

(1) by striking “is authorized to” and inserting “shall”; and

(2) by striking “authorization” and inserting “requirement”.

SEC. 203. (a)(1) During fiscal year 2002 and each succeeding fiscal year, notwithstanding any provision of the Federal Rules of Criminal Procedure to the contrary, in order to permit victims of crimes associated with the terrorist acts of September 11, 2001, to watch trial proceedings in the criminal case against Zacarias Moussaoui, the trial court in that case shall order, subject to paragraph (3) and subsection (b), closed circuit televising of the trial proceedings to convenient locations the trial court determines are reasonably necessary, for viewing by those victims.

(2)(A) As used in this section and subject to subparagraph (B), the term “victims of crimes associated with the terrorist acts of September 11, 2001” means individuals who—

(i) suffered direct physical harm as a result of the terrorist acts that occurred in New York, Pennsylvania and Virginia on September 11, 2001 (hereafter in this section “terrorist acts”) and were present at the scene of the terrorist acts when they occurred, or immediately thereafter; or

(ii) are the spouse, legal guardian, parent, child, brother, or sister of, or who as determined by the court have a relationship of similar significance to, an individual described in subparagraph (A)(i), if the latter individual is under 18 years of age, incompetent, incapacitated, has a serious injury, or disability that requires assistance of another person for mobility, or is deceased.

(B) The term defined in paragraph (A) shall not apply to an individual who participated or conspired in one or more of the terrorist acts.

(3) Nothing in this section shall be construed to eliminate or limit the district court’s discretion to control the manner, circumstances, or availability of the broadcast where necessary to control the courtroom or protect the integrity of the trial proceedings or the safety of the trial participants. The district court’s exercise of such discretion shall be entitled to substantial deference.

(b) Except as provided in subsection (a), the terms and restrictions of section 235(b), (c), (d) and (e) of the Antiterrorism and Effective Death Penalty Act of 1996 (42 U.S.C. 10608(b), (c), (d), and (e)), shall apply to the televising of trial proceedings under this section.

SEC. 204. Title II of Public Law 107–77 is amended in the second undesignated paragraph under the heading “Department of Commerce, National Institute of Standards and Technology, Industrial Technology Services” by striking “not to exceed \$60,700,000 shall be available for the award of new grants” and inserting “not less than \$60,700,000 shall be used before October 1, 2002 for the award of new grants”.

115 Stat. 774.

SEC. 205. None of the funds appropriated or otherwise made available by this Act or any other Act may be used to implement, enforce, or otherwise abide by the Memorandum of Agreement signed by the Federal Trade Commission and the Antitrust Division of the Department of Justice on March 5, 2002.

SEC. 206. Public Law 106–256 is amended in section 3(f)(1) by striking “within 18 months of the establishment of the Commission” and inserting “by June 20, 2003”.

33 USC 857–19
note.

SEC. 207. The American Section, International Joint Commission, United States and Canada, is authorized to receive funds from the United States Army Corps of Engineers for the purposes of conducting investigations, undertaking studies, and preparing reports in connection with a reference to the International Joint Commission on the Devils Lake project mentioned in Public Law 106–377.

SEC. 208. Section 282(a)(2)(D) of the Agricultural Marketing Act of 1946 is amended to read as follows:

7 USC 1638a.

“(D) in the case of wild fish, is—

“(i) harvested in the United States, a territory of the United States, or a State, or by a vessel that is documented under chapter 121 of title 46, United States Code, or registered in the United States; and

“(ii) processed in the United States, a territory of the United States, or a State, including the waters thereof, or aboard a vessel that is documented under chapter 121 of title 46, United States Code, or registered in the United States; and”.

SEC. 209. Of the amounts appropriated in Public Law 107–77, under the heading “Department of Commerce, National Oceanic and Atmospheric Administration, Operations, Research, and Facilities”, for coral reef programs, \$2,500,000, for a cooperative agreement with the National Defense Center of Excellence for Research in Ocean Sciences to conduct coral mapping in the waters of the Hawaiian Islands and the surrounding Exclusive Economic Zone in accordance with the mapping implementation strategy of the United States Coral Reef Task Force.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE: USE OF VIDEO
TELECONFERENCING AND
TELECONFERENCING FOR CERTAIN
CRIMINAL AND JUVENILE
DELINQUENCY PROCEEDINGS

Standing Order No. 20-17 (BAH)
Chief Judge Beryl A. Howell

ORDER

Upon consideration of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), H.R. 748, enacted on March 27, 2020, and pertinent legal and factual circumstances, including—

1. On March 13, 2020, the President of the United States declared a national emergency under the National Emergencies Act, 50 U.S.C. §§ 1601 *et seq.*, with respect to the Coronavirus Disease 2019 (COVID-19) global pandemic¹;
2. On March 29, 2020, the Judicial Conference of the United States found “that emergency conditions due to the national emergency declared by the President” with respect to COVID-19 “have materially affected and will materially affect the functioning of the federal courts generally”²;
3. The Centers for Disease Control and Prevention (“CDC”) and other public health authorities have advised taking precautions to reduce the possibility of exposure to COVID-19 during

¹ *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, OFFICE OF THE PRESIDENT OF THE UNITED STATES, <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (last visited Mar. 29, 2020).

² Memorandum, dated March 29, 2020, from Jim Duff, Director of the Administrative Office of the Courts, RE: UPDATE ON CARES ACT PROVISIONS FOR CRIMINAL PROCEEDINGS, at 1; *see also* CARES Act, Div. B, Title V, § 15002(b)(1) & (b)(2).

this global pandemic in order to slow the spread of the disease and, because “[t]he virus is . . . spread mainly from person-to-person . . . [b]etween people who are in close contact with one another,”³ the CDC further advises that individuals should engage in “social distancing” by maintaining a distance of at least “6 feet . . . from others when possible”⁴;

4. In this metropolitan region, states of emergency due to COVID-19 have been declared by the Mayor of the District of Columbia on March 11, 2020, and by the Governors of the contiguous states of Maryland and Virginia, on March 16 and March 17, 2020, respectively, with recommendations issued to “utilize telework as much as possible”⁵ and to “[p]ractice social distancing”⁶;
5. As of today’s date, several individuals detained in the D.C. Department of Corrections’ D.C. Jail have tested positive for COVID-19, resulting in the isolation of those individuals and quarantine of other detained individuals within the D.C. Jail with charges pending in the U.S. District Court for the District of Columbia or in other local and federal courts in this metropolitan area⁷;
6. The CARES Act permits the Chief Judge of the federal district court covered by the Judicial Conference finding, CARES Act, Div. B, Title V, § 15002(b)(1), to authorize, “on motion of” the Chief Judge, the use of video conferencing, or telephone conferencing if video

³ *How Coronavirus Spreads*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html> (last visited Mar. 29, 2020).

⁴ *Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html> (last visited Mar. 29, 2020).

⁵ *Governor Northam Orders Statewide Closure of Certain Non-Essential Businesses, K-12 Schools*, OFFICE OF THE GOVERNOR OF VIRGINIA, <https://www.governor.virginia.gov/newsroom/all-releases/2020/march/headline-855292-en.html> (last visited Mar. 29, 2020).

⁶ *Coronavirus Disease 2019 (COVID-19) Frequently Asked Questions*, MARYLAND DEPARTMENT OF HEALTH, https://phpa.health.maryland.gov/Documents/coronavirus_FAQ.pdf (last visited Mar. 29, 2020).

⁷ *2 More Inmates in D.C. Jail Test Positive for COVID-19*, WJLA, <https://wjla.com/news/coronavirus/2-more-inmates-in-dc-jail-test-positive-for-covid-19> (last visited March 29, 2020).

teleconferencing is not reasonably available, in the following ten federal criminal proceedings, with the consent of the defendant after consultation with counsel, upon occurrence of the events set out in paragraphs 1 and 2, above: “(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[;] (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,” *id.*⁸;

7. The CARES Act further permits the Chief Judge of the federal district court covered by the Judicial Conference finding, *id.* § 15002(b)(2), to authorize, “on motion of” the Chief Judge, the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, for 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, with the consent of the defendant after consultation with counsel, upon

⁸ Use of video teleconferencing, with the defendant’s consent, is already permitted for some of these federal criminal proceedings. *See, e.g.*, FED. R. CRIM. P. 5(f) (initial appearance), 10 (arraignment), 43(b)(2) (misdemeanor proceedings).

occurrence of the events set out in paragraphs 1 and 2, above, and the Chief Judge “specifically finds” that such felony pleas and sentencings “cannot be conducted in person without seriously jeopardizing public health and safety” and the presiding district judge “in a particular case finds for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice,” *id.*;

This Court therefore makes the following FINDINGS:

- (A) that the United States District Court for the District of Columbia is a district court covered by the Judicial Conference finding, set out in paragraph 2, above; and further
- (B) that in-court proceedings for 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 require close contact between criminal defendants and their counsel, government counsel, court staff, Deputy United States Marshals, Court Security Officers, and Judges and thereby runs afoul of the recommendations of the CDC and other public health and government authorities, set out in paragraphs 3 and 4, above, particularly in light of the current need for isolation and quarantine of residents in the D.C. Jail, as described in paragraph 5, above, and thus cannot be conducted in person without seriously jeopardizing public health and safety.

ACCORDINGLY, IT IS HEREBY:

ORDERED that the District Judges of this Court are **AUTHORIZED** to use video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, with the consent of the defendant after consultation with counsel, for the following criminal proceedings:

- (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;
- (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 the District Judges of this Court are **AUTHORIZED** to conduct felony pleas under Rule 11 of the Federal Rules of Criminal Procedure, felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure, and equivalent plea, sentencing, or disposition proceedings under chapter 403 of title 18, United States Code (commonly known as the “Federal Juvenile Delinquency Act”), by video teleconference, or by telephone conference if video teleconferencing is not reasonably available, with the consent of the defendant or juvenile after consultation with counsel, if, in a particular case, the District Judge finds for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice; it is further

ORDERED that the authorization for use of video teleconferencing or telephone conferencing under this Standing Order shall be reviewed by the Chief Judge every 90 days to determine whether this authorization is still warranted or whether extension of the authorization is necessary; and it is further

ORDERED that the authorization for use of video teleconferencing or telephone conferencing under this Standing Order shall remain in effect until the earliest of the following:

(A) 30 days after the date on which the President's national emergency declaration terminates;

(B) The date on which the Judicial Conference of the United States finds that emergency conditions due to the national emergency declared by the President no longer materially affect the functioning of either the Federal courts generally or this Court in particular; or

(C) This Court determines that such authorization is no longer warranted.

SO ORDERED.

Date: March 29, 2020

BERYL A. HOWELL
Chief Judge

FILED**APR - 8 2020**Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**IN RE: PUBLIC AND MEDIA ACCESS
TO JUDICIAL PROCEEDINGS DURING
COVID-19 PANDEMIC

Standing Order No. 20-20 (BAH)

Chief Judge Beryl A. Howell

ORDER

In order to facilitate public and media access to judicial proceedings conducted via videoconference or teleconference, given that in-person proceedings at the courthouse in civil, criminal and miscellaneous matters have been suspended due to health and safety concerns during the Coronavirus Disease (COVID-19) pandemic, *see* Standing Order Nos. 20-09, 20-17 and 20-19, consistent with the temporary exception approved by the Executive Committee of the Judicial Conference to the Judicial Conference's policy generally prohibiting the broadcasting of proceedings in federal district courts, *see* Guide to Judiciary Policy, Vol. 10, Ch. 4, which exception will expire upon a finding by the Judicial Conference that the emergency conditions due to the emergency declared by the President with respect to COVID-19 are no longer materially affecting the functioning of the federal courts generally or a particular district,¹ it is hereby –

¹ See Memoranda of James C. Duff, Dir. Administrative Office of the U.S. Courts, *Use Of Teleconference Technology To Provide The Public And Media Access To Court Proceedings* (March 31, 2020), available at <http://jnet.ao.dcn/sites/default/files/pdf/DIR20-054.pdf> and *Guidance on the Use of Video and Teleconference Technology to Provide Access to the Public and the Press in Criminal Proceedings* (April 2, 2020) (noting that March 31, 2020 Memorandum addressed teleconferencing in civil proceedings), available at http://jnet.ao.dcn/sites/default/files/pdf/DIR20-059_0.pdf. See also *Judiciary Authorizes Video/Audio Access During COVID-19 Pandemic*, UNITED STATES COURTS, <https://www.uscourts.gov/news/2020/03/31/judiciary-authorizes-videoaudio-access-during-covid-19-pandemic> (describing the March 31, 2020 memorandum) (last visited Apr. 8, 2020); *Judiciary Provides Public, Media Access to Electronic Court Proceedings*, UNITED STATES COURTS, <https://www.uscourts.gov/news/2020/04/03/judiciary-provides-public-media-access-electronic-court-proceedings> (describing the April 2, 2020 memorandum) (last visited Apr. 8, 2020).

ORDERED that video or audio access to judicial proceedings in civil, criminal and miscellaneous matters will be provided to the public and the media, with the consent of the presiding judge, when the proceeding is conducted using video and/or audio teleconferencing, notwithstanding the general ban on broadcasting of proceedings in federal district court set out in the Judicial Conference's Guide to Judiciary Policy, and in FEDERAL RULE OF CRIMINAL PROCEDURE 53, D.D.C. LOCAL CIVIL RULE 83.1 and D.D.C. LOCAL CRIMINAL RULE 53.1.1; it is further

ORDERED that the public or media using remote video or audio access to judicial proceedings are not permitted to photograph, record, or rebroadcast the proceedings; it is further

ORDERED that any member of the public or media who violates the prohibitions governing remote video or audio access to judicial proceedings may be subject to sanctions, including contempt sanctions, removal of court issued media credentials, restricted or denial of entry to future hearings, or any other sanctions deemed necessary and appropriate by the presiding judge; and it is further

ORDERED that the authorization detailed in this Order will expire upon the conclusion of the public health emergency or further order of this Court, whichever is earlier.

SO ORDERED.

Dated: April 8, 2020

The signature of Beryl A. Howell is written in cursive over a horizontal line. To the left of the signature is a circular seal of the United States District Court for the District of Columbia.

BERYL A. HOWELL
Chief Judge