

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
DEC 13 2022  
By: TAMMY H. DOWNS, CLERK  
DEP CLERK

IN RE: COURT OPERATIONS DURING COVID-19 PANDEMIC

**ADMINISTRATIVE ORDER TWENTY-SEVEN**

The question is whether to extend this Court's CARES Act authorizations, which allow remote proceedings in felony pleas, felony sentencings, and certain other criminal matters. They will expire this week absent an extension. The Court had hoped that those authorizations would no longer be necessary this winter. As has so often been the case during the pandemic, though, our circumstances are cloudy.

We have successfully relaxed many mitigation measures in recent months. Our current measures—increased ventilation, staggered start times for jury trials insofar as practical, extra screening of potential jurors, and distancing at the discretion of the presiding Judge—are working well and will continue. But, since the Thanksgiving holiday, Court personnel and their family members have begun reporting some illness again. So far this month, our Court has completed two jury trials, a lengthy bench trial, and many hearings without any known virus-related incidents. But, the number of potential jurors with

COVID-19 related concerns is rising. The Community Risk Level for most of the forty-one counties in the Eastern District is low. But, it is high or medium in seven of those counties, and generally trending up.<sup>1</sup> The Eastern District has more than five hundred individuals in custody at thirteen facilities in Arkansas and surrounding states. The U.S. Marshal reports that there are a few active COVID-19 cases at two of those facilities. But, one of those institutions is where approximately 25% of our Court's detainees are held. The holiday season is in full swing. Flu and other viruses are circulating freely.

These mixed circumstances counsel keeping our options open. Notwithstanding the relative improvement in our virus-related circumstances, remote proceedings (especially in criminal cases) should remain available. They have been, and may soon be again, an essential part of reducing the virus risk while continuing full operations. On behalf of our Court, I have therefore reviewed the CARES Act authorizations made first in March 2020 by Administrative Order Three, extended periodically since then by various Administrative Orders, and last extended by Administrative Order Twenty-Five until 13 December 2022. CARES Act, Pub. L. No. 116-136 § 15002(b)(3)(B).

It remains necessary – when the interests of justice so require – to conduct some criminal proceedings remotely. In particular, moving

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<sup>1</sup> [www.cdc.gov/coronavirus/2019-ncov/your-health/covid-by-county.html](https://www.cdc.gov/coronavirus/2019-ncov/your-health/covid-by-county.html)

our many in-custody defendants to, from, and around the courthouses, plus mixing people from various locations, creates health-related challenges for the defendants, the United States Marshal, lawyers, Court personnel, and others. Based on the current risk presented by COVID-19 in the Eastern District, all felony pleas and all felony sentencings cannot be conducted in person without seriously jeopardizing public health and safety. Pub. L. No. 116-136 § 15002(b)(2)(A). I therefore extend the authorizations in Administrative Orders Three, Six, Seven, Nine, Eleven, Fifteen, Seventeen, Eighteen, Twenty-One, Twenty-Three, and Twenty-Five for video teleconferencing (or teleconferencing if video teleconferencing is not reasonably available) in all previously listed kinds of proceedings for another ninety days until 13 March 2023. Pub. L. No. 116-136 § 15002(b)(1). If the defendant consents after consulting with counsel, and the presiding Judge concludes that a specific felony plea or specific felony sentencing cannot be further delayed without doing serious harm to the interests of justice, then the proceeding may be held by video teleconference or teleconference, if video teleconferencing is not reasonably available. Pub. L. No. 116-136 § 15002(b)(2)(A) & (b)(3)(B). I will review these authorizations again before 13 March 2023.

All the active and senior United States District Judges and United States Magistrate Judges for the Eastern District of Arkansas concur in this Administrative Order.

So Ordered.

WPM Marshall Jr.

D.P. Marshall Jr.

Chief Judge

13 December 2022