

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

In the matter of

EASING RESTRICTIONS ON
COURT PROCEEDINGS
EFFECTIVE JUNE 7, 2021

**MISCELLANEOUS GENERAL
ORDER 21-14**

This Miscellaneous General Order eases most of the Court’s COVID-19-related requirements and supersedes prior Miscellaneous General Orders related to the COVID-19 pandemic.¹ The terms of this Order are effective on June 7, 2021, unless otherwise noted.

Conditions in the District of Alaska have materially improved in recent months and the Court concludes that it is safe to further ease restrictions related to COVID-19. Alaska has made great progress in ensuring widespread availability of the COVID-19 vaccine, including to federal inmates housed in Alaska Department of Corrections facilities.² All Alaskans over the age of 12 are eligible to receive a COVID-19 vaccination.³ According to the State of Alaska, 52% of Alaskans age 12 and over have received at least one dose of the vaccine, including 72% of

¹ On March 30, 2020, the Court issued Miscellaneous General Order 20-11 concerning changes to Court operations and deadlines during the COVID-19 pandemic. Additionally, on April 7, 2020, the Court issued Miscellaneous General Order 20-12 concerning expedited detention hearing procedures. Since April 20, 2020, the Court has issued Miscellaneous General Orders 20-13, 20-17, 20-20, 20-24, 20-27, 20-29, 20-34, 20-38, 20-40, 21-05, 21-09 and most recently, 21-12, which modified the operations and procedures and extended those continuances, to June 7, 2021. The Court also previously issued Miscellaneous General Order 20-32, effective on October 19, 2020, which imposed face mask and other entry requirements throughout the District of Alaska courthouses in Anchorage, Fairbanks, and Juneau.

² See Alaska Department of Corrections, Vaccine Notice 5/4/2021, <https://doc.alaska.gov/> (“DOC continues to offer the COVID-19 vaccine to all inmates and staff in our facilities throughout the state.”) (last visited June 1, 2021).

³ Coronavirus (COVID-19) Update: FDA Authorizes Pfizer-BioNTech COVID-19 Vaccine for Emergency Use in Adolescents in Another Important Action in Fight Against Pandemic, FDA News Release, <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-pfizer-biontech-covid-19-vaccine-emergency-use> (last visited May 26, 2021).

Alaskans age 65 and over, and 46% of Alaskans age 12 and over are fully vaccinated.⁴ Additionally, the number of daily new cases and hospitalizations as a result of COVID-19 have been in steady decline in the State of Alaska. There has been a daily average of 72 new cases of COVID-19 in May 2021,⁵ which is down from the peak of a daily average of 553 new cases in November 2020, and well below the rates for the preceding months.⁶ Hospitalizations of people with confirmed or suspected cases of COVID-19 are down from approximately 150 in late November and early December 2020, to 17 as of June 1, 2021.⁷

Corresponding with the improving state of the COVID-19 pandemic in Alaska has been the removal of state and local mandates. The State of Alaska and Municipality of Anchorage continue to recommend that Alaskans and visitors take certain measures to protect themselves and others from the spread of COVID-19.⁸ However, neither the State nor Municipality have any current COVID-19 mandates—including a masking requirement or gathering restrictions—in place.⁹ Further, on May 13, 2021, the Centers for Disease Control and Prevention (“CDC”) updated its guidance, advising that fully vaccinated¹⁰ people no longer need to wear a mask or

⁴ State of Alaska Vaccine Monitoring Dashboard, <https://experience.arcgis.com/experience/c74be37e02b44bb8b8b40515eabbab55> (last visited June 1, 2021).

⁵ The Court analyzed publicly available data as of May 26, 2021.

⁶ Alaska Department of Health and Social Services, COVID-19 Cases by Date Reported (data as of May 25, 2021).

⁷ State of Alaska COVID-19 Hospital Data Dashboard, <https://alaska-coronavirus-vaccine-outreach-alaska-dhss.hub.arcgis.com/apps/Alaska-DHSS::hospital-dashboard/explore> (last visited June 1, 2021).

⁸ State of Alaska COVID-19 Response and Recovery Health Advisories, <https://covid19.alaska.gov/health-advisories/> (last visited May 26, 2021); Municipality of Anchorage Coronavirus Response, Municipal Updates, <https://covid-response-moa-muniorg.hub.arcgis.com/pages/updates> (last visited May 26, 2021).

⁹ State of Alaska COVID-19 Response and Recovery Health Advisories, <https://covid19.alaska.gov/health-advisories/> (last visited May 26, 2021); Municipality of Anchorage Coronavirus Response, Municipal Updates, <https://covid-response-moa-muniorg.hub.arcgis.com/pages/updates> (last visited May 26, 2021).

¹⁰ In general, people are considered fully vaccinated “two weeks after their second dose in a 2-dose series, such as the Pfizer or Moderna vaccines, or two weeks after a single-dose vaccine, such as Johnson & Johnson’s Janssen vaccine[.]” Centers for Disease Control and Prevention, When You’ve Been Fully Vaccinated, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html> (last visited May 28, 2021). Individuals who are not fully vaccinated according to the Centers for Disease Control and Prevention are referred to in this Order as “unvaccinated individuals.”

physically distance in any setting.¹¹ The CDC also advised that most fully vaccinated people can refrain from testing following a known exposure to COVID-19.¹²

One day after the CDC issued its updated guidance, the Administrative Office of the United States Courts (“AO”) released a “Safe Return to the Workplace” Handbook summarizing the current state of AO policy guidance in relation to court operations during the COVID-19 pandemic. The Handbook does not account for the updated CDC guidance for fully vaccinated individuals. Among the recommendations in that Handbook are that court units should inquire as to vaccine status only in such a manner as would permit anonymous responses, and that court units should not impose “negative employment consequences” on employees who choose not to be vaccinated.¹³ The Handbook states that “[b]eing vaccinated for COVID-19 is not a legal qualification for serving on a jury.”¹⁴ The Handbook goes on to advise that courts should not make vaccination status a condition of courthouse access for jurors, attorneys, or members of the public.¹⁵ The Handbook, which discourages inquiry into whether particular people have been vaccinated, and CDC guidance, which imposes different COVID-19 precautions based on vaccination status, are in tension. The Court evaluated its revised policies in part by considering this conflicting guidance.

Based on the foregoing, the Court hereby orders that certain continuances, operations, and procedures established in the prior Miscellaneous General Orders shall be superseded as outlined in this Order. The Court will continue to monitor circumstances in the District of Alaska and will reconsider the protocols as necessary. Specifically, the Court orders as follows:

A. Criminal Matters

1. The provisions affecting criminal cases as outlined in Miscellaneous General Order 21-12 will expire on June 7, 2021, unless otherwise ordered.
2. The Parties in all criminal proceedings should be prepared for proceedings taking place on or after June 7, 2021, as scheduled. As stated in Miscellaneous General Order 21-12, the time period of the continuance implemented by the Court’s General Orders

¹¹ Centers for Disease Control and Prevention, Interim Public Health Recommendations for Fully Vaccinated People, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html> (last visited May 26, 2021).

¹² *Id.*

¹³ United States Courts, *Safe Return to the Workplace Handbook*, at 7 (May 2021).

¹⁴ *Id.*

¹⁵ *Id.* at 7–8.

under the Speedy Trial Act shall be from March 16, 2020 to June 7, 2021.

3. The expedited procedure governing motions for release of pretrial and presentence defendants based on the COVID-19 pandemic set forth in Miscellaneous General Order 20-12 shall remain in effect until June 7, 2021. Miscellaneous General Order 20-12 is rescinded effective June 7, 2021.
4. Effective immediately, criminal jury trials will proceed as follows:
 - (A) Jurors are not required to be vaccinated to serve on a petit jury.
 - (B) Consistent with existing Court practices, the Court will issue an optional supplemental COVID-19 questionnaire to jurors and inform them about the Court's updated COVID-19 related policies for jury trials. The Court will evaluate on a case-by-case basis who should be temporarily excused or deferred on the basis of COVID-19 health concerns.
 - (C) It is important for the Court to protect the health and safety of prospective jurors. The Court will require all jurors and prospective jurors to wear masks, regardless of vaccination status, when at the federal courthouse. Social distancing by jurors and prospective jurors will not be possible. Requiring jurors and prospective jurors to wear masks when at the federal courthouse appropriately balances the Court's decision not to inquire as to prospective jurors' vaccination status, while also promoting the safety of all jurors regardless of vaccination status.
 - (D) Except as otherwise stated in this Order, in accord with current CDC guidance, fully vaccinated individuals, including members of the public, the parties, witnesses, and court staff, are not required to wear a mask while in court. Unvaccinated individuals are strongly encouraged to comply with applicable CDC and public health guidance relating to COVID-19, including the CDC's recommendation that unvaccinated individuals wear a face mask and practice social distancing.
 - (E) All individuals, regardless of vaccination status, may wear a mask while at the federal courthouse.
5. Acting pursuant to § 15002(b) of the CARES Act and the authority granted by the Judicial Conference of the United States, the Court, as outlined below, finds that

emergency conditions continue to materially affect the functioning of the courts within this judicial district. Additionally, on February 24, 2021, the President notified Congress that the pandemic continues to cause significant risk to the public health and safety of the nation, continuing the national emergency concerning the COVID-19 pandemic beyond March 1, 2021.¹⁶

Thus, pursuant to the authority granted under § 15002(b)(1) of the CARES Act, judges in this district, with the consent of the defendant or the juvenile after consultation with counsel, may continue to use video conferencing, or telephone conferencing if video conferencing is not reasonably available, for the following events:

- (A) Detention hearings under 18 U.S.C. § 3142.
- (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 18 U.S.C. § 3148.
- (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 18 U.S.C. § 403 (commonly known as the “Federal Juvenile Delinquency Act”), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings.

This authorization was initially effective for 90 days as of May 1, 2020, as established by Miscellaneous General Order 20-13, and pursuant to the authority granted in § 15002(b)(3) of the CARES Act, the Chief Judge reauthorized the use of video or

¹⁶ White House Letter on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/24/a-letter-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic/> (Feb. 24, 2021) (last visited May 27, 2021).

telephone conferencing for additional 90 day periods as set forth in Miscellaneous General Orders 20-20, 20-29, 20-40, 21-05, and 21-09, unless earlier terminated.

The 90-day extension authorized by Miscellaneous General Order 21-09 expires on June 29, 2021. However, acting pursuant to § 15002(b), the Chief Judge finds that emergency conditions due to the COVID-19 pandemic persist and continue to materially affect the function of the courts within this judicial district. The Chief Judge specifically finds that while COVID-19 vaccines are widely available and the spread of COVID-19 has been greatly reduced, the effects of the COVID-19 pandemic continue to materially affect the function of the courts within the District of Alaska. Like many courts across the country, the District of Alaska now faces a backlog of criminal cases directly caused by the Court's limited ability to process criminal cases and hold criminal jury trials over the past year. The downstream effects of COVID-19 on the Court's operations will continue to strain judicial resources. The ability to utilize videoconferencing or teleconferencing for the criminal events listed in § 15002(b)(1) is necessary for the Court to address the backlog of criminal cases caused by the COVID-19 pandemic. Reauthorization under the CARES Act will permit the proceedings listed above to proceed by videoconference or by telephone if videoconferencing is not reasonably available, at the discretion of individual judges.

Neither the President nor the Judicial Conference of the United States have terminated the emergency authority under § 15002(b)(5). Thus, pursuant to the authority granted in § 15002(b)(3), the Chief Judge reauthorizes the use of videoconferencing, or telephone if videoconference is not reasonably available, for an additional 90-day period, as set forth above.

Notwithstanding the foregoing, pursuant to the provisions of the CARES Act, this authority shall terminate on the last day of the covered emergency period, or the date on which the Judicial Conference of the United States finds that emergency conditions due to the national emergency declared by the President under the National Emergencies Act with respect to the COVID-19 pandemic no longer materially affect the functioning of either the federal courts generally or the courts within this district.

6. Pursuant to § 15002(b)(2) of the CARES Act, the Court finds that 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 can be conducted in person without seriously jeopardizing public health and safety. As a result, effective June 7, 2021, **all felony pleas shall be conducted in person and felony sentencings shall be conducted in person unless otherwise ordered.** Authorization for use of video teleconferencing or telephone conferencing for the criminal proceedings in § 15002(b)(2) is hereby terminated effective June 7, 2021.

B. Civil Matters

1. The Parties in all civil proceedings should be prepared for proceedings taking place on or after June 7, 2021, as scheduled.
2. As the Court addresses its case backlog caused because of prior COVID-19 restrictions, criminal jury trials shall have scheduling priority over civil jury trials. Civil jury trials will follow the same COVID-19 protocols as criminal jury trials.
3. The Court recognizes that delays and restrictions because of COVID-19 may still impact attorneys and their clients, making it difficult to proceed with discovery and other aspects of civil litigation as previously scheduled. Accordingly, motions for further extensions of time may be made to the judge assigned to the matter
4. All proceedings shall be conducted in-person unless otherwise ordered. The parties may request to proceed by video conference or telephone at the discretion of the presiding judge.

C. Bankruptcy Matters

1. General Orders 2020-3, 2020-4, 2020-6, 2020-7, 2020-8, and 2020-9 issued by the United States Bankruptcy Court for the District of Alaska remain in effect.
2. All bankruptcy proceedings shall be conducted by video conference or telephone, unless otherwise ordered. The parties may request to proceed in an in-person hearing.

D. Access by the Public

1. All courthouses shall be open to the public.
2. Non-case related activities including naturalization ceremonies, attorney admission ceremonies, mock trials, CLE events, school tours, and all other non-case related gatherings may be scheduled beginning August 1, 2021.

3. The library is open to the public by appointment only. Library contact information is as follows: anchoragelibrary@lb9.uscourts.gov or phone 907-271-5655.
4. The public will be permitted to observe all public proceedings as space allows. The Court strongly recommends that unvaccinated members of the public practice social distancing where possible.
5. Miscellaneous General Order 20-32 is rescinded effective immediately. The Court strongly recommends that all individuals entering any courthouse comply with applicable CDC and public health guidance relating to COVID-19, including the CDC's recommendation that unvaccinated individuals wear a face mask and practice social distancing.
6. Effective immediately, and as originally instructed in Miscellaneous General Order 20-32, individuals currently diagnosed with, or experiencing any symptoms of COVID-19; unvaccinated individuals who have had close physical contact within the last 14 days with a person who has been diagnosed with COVID-19; or individuals who have been asked to self-observe, self-isolate, or self-quarantine by a doctor, hospital, or public health authority within the last 14 days shall not enter or remain in any courthouse.
7. Judges may otherwise take such actions as may be lawful and appropriate to ensure the fairness of all proceedings and preserve the rights of the parties and members of the public.

E. Court Services and Employees

1. All Court operations will return to normal.
2. Effective immediately, while working at the federal courthouse, court employees are strongly encouraged to comply with applicable CDC and public health guidance relating to COVID-19, including the CDC's recommendation that unvaccinated individuals wear a face mask and practice social distancing.

DATED this 1st day of June, 2021.

/s/ Timothy M. Burgess
Hon. Timothy M. Burgess
Chief United States District Judge

/s/ Sharon L. Gleason
Hon. Sharon L. Gleason
United States District Judge

/s/ Joshua M. Kindred
Hon. Joshua M. Kindred
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