

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

In the matter of

SUSPENSION OF COURT PROCEEDINGS
EFFECTIVE OCTOBER 4, 2021

**MISCELLANEOUS GENERAL
ORDER 21-22**

The State of Alaska continues to experience an unprecedented spike of COVID-19 transmission due to the Delta variant. Alaska’s transmission, hospitalization, and death rates are currently the highest per capita in the nation and climbing to extremely critical levels with hospitals now rationing care. Effective September 21, 2021, Alaska Department of Health and Social Services Commissioner Adam Crum issued Addendum No. 1 to the April 30, 2021 COVID-19 Public Health Emergency Order, adopting and implementing measures to support flexibility in the provision of Alaska’s healthcare systems due to the current outbreak of COVID-19 in Alaska.¹

The Court must balance public health and safety with its duty to protect litigants’ rights and to resolve cases. Therefore, in consideration of the foregoing, the Court hereby orders that certain continuances, operations, and procedures established in prior orders shall be reinstated and remain in effect until at least November 1, 2021. The Court continues to monitor the circumstances in the District of Alaska and reevaluate its operations plan in light of the rapidly evolving situation.

Accordingly, effective October 4, 2021, the Court will hold most proceedings via video or teleconference. Individual judges may order certain hearings to proceed in person, if necessary, with proper restrictions to continue to protect the public safety and prevent the spread of COVID-19. Because of the unique challenges posed by jury selection, jury trials in both criminal

¹ COVID-19 Public Health Emergency Order-Addendum No. 1. <https://gov.alaska.gov/wp-content/uploads/sites/2/COVID-19-PUBLIC-HEALTH-EMERGENCY-ADDENDUM-NO-1-Final.pdf> (last visited Sept. 23, 2021).

and civil cases are continued until at least November 1, 2021, unless excepted by the assigned judge in a particular case in accord with paragraph A.4. or B.2.

THE COURT HEREBY ORDERS that certain continuances, operations, and procedures established in prior Miscellaneous General Orders (“MGOs”) shall be modified as further specified below. This Order shall be the controlling Order on Court operations effective October 4, 2021, and supersedes prior MGOs to the extent they are inconsistent.

A. Criminal Matters:

1. All Grand Jury proceedings scheduled to be held before November 16, 2021, are continued. Pursuant to 18 U.S.C. § 3161(b), any felony case charged by complaint from September 22, 2021, to November 16, 2021, shall have an additional 30 days from the date of arrest to file the indictment. Due to health and safety concerns regarding the COVID-19 virus and the requirement of grand jurors to travel, sit in close proximity to one another, and interact with counsel and court staff, the Court finds that the resulting period of delay from September 22, 2021, through November 16, 2021, serves the ends of justice in a manner that outweighs the best interest of the public and the defendant in a speedy trial. Accordingly, the delay shall be excluded in computing the time within which an indictment must be filed pursuant to 18 U.S.C. § 3161(h)(7)(A) and (B)(i).

2. To protect the constitutional right of defendants to a speedy trial and pursuant to Federal Rules of Criminal Procedure 5 and 10, the Court will continue to hold initial appearances, arraignments, and preliminary hearings in criminal cases without unnecessary delay. Judges should conduct such proceedings via video or teleconference, unless otherwise ordered by the assigned judge.

3. All criminal jury trials scheduled to occur on or before November 1, 2021, are continued, except those criminal jury trials that the assigned judge may select to proceed under paragraph A.4. Judges may issue other orders concerning future continuances as necessary and appropriate. All trial-specific deadlines in criminal cases scheduled to begin on or before November 1, 2021, are continued pending further order of the assigned judge. Pretrial deadlines, such as motion deadlines, will remain in effect. If an evidentiary hearing

is required, the parties should jointly inform the Court if they are willing to conduct the evidentiary hearing by video conference.

4. The Court anticipates, and the parties should be prepared, for criminal jury trials proceeding on a limited basis after November 1, 2021. Although all criminal jury trials scheduled to occur before November 1, 2021, are continued, assigned judges may make exceptions as justice requires.

5. Except as directed by an individual judge, in-person criminal proceedings, including sentencings, supervised release revocation hearings, motion hearings, plea hearings, and misdemeanor bench trials are suspended until at least November 1, 2021. **Unless the parties indicate otherwise as set out in A.6., below, all in-person hearings will be vacated and reset.**

6. Parties with currently set in-person hearings are encouraged to proceed by virtual appearance where a virtual appearance is practicable and consistent with the law. In order to proceed with a currently set hearing, the parties shall file a joint status report indicating their agreement to proceed by telephone or video conference and the defendant's waiver of physical appearance within 7 days of this Order.

7. The Court finds that the COVID-19 pandemic continues to materially affect the functioning of the Court and for the reasons set forth in MGO 20-18, makes a jury trial impractical at this time. Additionally, because of the unique challenges of jury selection in Alaska and logistical limitations due to COVID-19 safety protocols, the time period of the continuances implemented by this General Order will be excluded under the Speedy Trial Act. The Court specifically finds that the ends of justice served by ordering the continuances outweigh the best interests of the public and any defendant's right to a speedy trial, pursuant to 18 U.S.C. § 3161(h)(7)(A), (B)(i), and (B)(iv). Any motion by a criminal defendant seeking an exception to this Order to exercise that right should be directed to the presiding judge assigned to the matter. Absent further order of the Court, the period of the exclusion shall be from October 4, 2021, through November 1, 2021.

The Court understands that the continuance of jury trials has and will continue to cause hardship for all parties. For criminal cases, presiding judges will hold trial setting status conferences as required. Prior to any status conference, parties are required to confer to determine if a stipulation can be entered to continue the trial date and toll time under the Speedy Trial Act, which may eliminate the need for a status conference. Each presiding judge will make case-specific findings and enter an order (whether as part of a stipulation or as a standalone order).

8. Judges may hold, and shall prioritize, any critical criminal proceeding which cannot be postponed without substantially prejudicing either party or irreversibly impeding the fair administration of justice. Judges should conduct such proceedings in person unless the assigned judge orders otherwise and determines that video conferencing, or telephone conferencing if video conferencing is not reasonably available for use, is practicable and consistent with the law.

9. On August 24, 2021, the Court issued MGO 21-16, which provided for the use of video teleconferencing, or telephone conferencing if video conferencing is not reasonably available, for certain criminal proceedings pursuant to the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). For the reasons set out therein, and acting pursuant to § 15002(b) of the CARES Act and the authority granted by the Judicial Conference of the United States, the Chief Judge finds that emergency conditions due to the COVID-19 outbreak continue to materially affect the functioning of the courts within this judicial district. Thus, pursuant to the authority granted under § 15002(b)(1) of the CARES Act, MGO 21-16 authorized judges in this District, with the consent of the defendant or the juvenile after consultation with counsel, 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.

On September 10, 2021, the Court issued MGO 21-19 pursuant to § 15002(b)(2) of the CARES Act, and further specifically found 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 cannot be conducted in person without seriously jeopardizing public health and safety. As a result, if judges in individual cases find, for specific reasons, that felony pleas or sentencings in those cases cannot be further delayed without serious harm to the interests of justice, judges may, with the consent of the defendant or the juvenile after consultation with counsel, conduct those proceedings by video conference, or by telephone conference if video conferencing is not reasonably available. This authority extends to equivalent plea, sentencing or disposition proceedings under 18 U.S.C. § 403.

These authorizations were initially effective for 90 days as of August 24, 2021, and September 10, 2021, respectively. Pursuant to the authority granted in § 15002(b)(3), the Chief Judge hereby reauthorizes the use of video or telephone conferencing for an additional 90 days as set forth in MGOs 21-16 and 21-18, unless earlier terminated. If the emergency persists longer than 90 days, the Chief Judge will review the situation for possible extension of authority pursuant to the provisions of the CARES Act. 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 virus outbreak no longer materially affect the functioning of either the Federal courts generally or the District of Alaska specifically.

10. Judges may otherwise take such actions as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties.

B. Civil Matters:

1. All civil jury trials scheduled to commence on or before November 1, 2021, are continued pending further order of the assigned judge. The parties are encouraged to consider alternative avenues for resolution, including bench trials or consent to trial by Magistrate Judge, in light of the suspension of jury trials. Judges may issue other orders concerning future continuances as necessary and appropriate. All jury trial-specific deadlines in civil cases scheduled to begin on or before November 1, 2021, are vacated pending further order of the assigned judge.

2. Although civil jury trials scheduled to occur on or before November 1, 2021, are continued, assigned judges may make exceptions as Court resources allow and as justice requires.

3. In civil cases with in-person hearings scheduled to commence on or before November 1, 2021, the parties shall file either a joint status report within 14 days of this Order indicating their agreement to proceed with the hearing by telephone or video conference or a request for a new hearing date.

4. Outside of court proceedings, parties to civil matters are encouraged to proceed by telephone or video conference where practicable. Depositions scheduled to occur on or before November 1, 2021, should proceed via video conference. Any disputes concerning scheduling or virtual accommodations may be resolved by application to the Court.

5. Judges may otherwise take such actions as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties.

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. No in-person hearings in bankruptcy appeals pending before the District Court scheduled to commence on or before November 1, 2021, will go forward. The parties are encouraged to proceed by telephone or video conference where practicable

D. Access by the Public:

1. All non-case related activities scheduled in the James M. Fitzgerald U.S. Courthouse in Anchorage, and U.S. Courthouses in Fairbanks and Juneau, are canceled until further notice. This includes naturalization ceremonies, attorney admission ceremonies, mock trials, CLE events, school tours, and all other non-case related gatherings.
2. In light of the current guidance and to protect the health and safety of defendants, litigants, counsel, court staff, and the public, the James M. Fitzgerald U.S. Courthouse in Anchorage and the U.S. Courthouses in Fairbanks and Juneau shall have limited access to the public except to persons with a scheduled appointment or entering to submit a physical filing to the drop box located in the lobby of each courthouse. Anyone entering the Courthouse must comply with the Court's masking requirements as set out in MGO 21-15.
3. When criminal or civil proceedings are held in person, the public will be permitted to observe in person as space allows while maintaining social distancing in the designated courtroom. A toll-free teleconference line will remain available only for the public to observe virtual proceedings. Dial-in information will be available in each case's individual docket on PACER and on the Court's calendar, which shall be posted on the Court's website. Phones must be muted and unless otherwise ordered, members of the public and media are strictly prohibited from recording or broadcasting any hearing, in whole or in part, in any fashion or for any purpose. Further instructions and restrictions are set forth on the Court's website and may change as necessary.

4. In criminal proceedings, close family members of defendants, victims (as defined in 18 U.S.C. § 3771(e)(2)), close family members of victims, or anyone permitted by law to make a statement during the proceedings may do so by telephone or video conferencing. Defense counsel shall provide the dial-in/video connection information to persons who may make statements on the defendant's behalf. Counsel for the government shall inform the victim(s) and family members of the victim(s) of the opportunity to make a statement and shall provide the dial-in/video connection information to such persons.

5. Anyone with a scheduled appointment or who is otherwise required to appear in person but believes they have mistakenly been denied entry should proceed as follows:

- Those represented by an attorney, please contact your attorney;
- Attorneys and pro se litigants scheduled to appear in court before a judge, please contact that judge's chambers or courtroom deputy (see court website at www.akd.uscourts.gov);
- For all other matters or questions, please contact the Clerk's Office at (907) 677-6100 (Anchorage), (907) 451-5791 (Fairbanks), or (907) 586-7458 (Juneau).

6. Judges may otherwise take such actions as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties and members of the public.

E. Court Services and Employees:

1. The Clerk's Office lobby shall be closed to the public except for those submitting physical filings in the drop boxes located in the lobby of each court facility near court security. Cash payments will not be accepted. The Clerk's Office will remain available by telephone, mail will be received, and new filings will be processed.

2. All U.S. Probation and U.S. Pretrial Services offices will be closed to the public but will remain in operation. Drug testing and other supervisory activities will continue. A probation or pretrial services duty officer will be available to answer questions telephonically at (907) 677-6170.

3. All court employees, including Clerk’s Office staff, U.S. Probation and Pretrial Services staff, and Chambers staff, shall telework whenever possible except as otherwise directed by their supervisor. While teleworking, all employees shall contact their direct supervisor daily, or as directed by their supervisor, for accountability and information dissemination.

4. It may be necessary from time to time for court employees to be physically present at the courthouse to perform certain essential functions. While working in the courthouse, court employees are required to wear face-coverings as set out in MGO 21-15, practice social distancing, and minimize face-to-face interactions with others to the extent practicable.

DATED this 28th day of September, 2021.

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

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