

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

In the matter of

CRIMINAL CASE PROCEEDINGS
AND REAUTHORIZATION UNDER
THE CARES ACT EFFECTIVE
AUGUST 24, 2021

**MISCELLANEOUS GENERAL
ORDER 21-16**

On June 1, 2021, Miscellaneous General Order (“MGO”) 21-14 was issued and 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”).

The Coronavirus Disease 2019 (“COVID-19”) outbreak is still considered to be a national emergency under the National Emergencies Act, 50 U.S.C. § 1601, *et seq.* The Judicial Conference of the United States maintains that “emergency conditions due to the national emergency declared by the President with respect to COVID-19 will materially affect the functioning of the federal courts generally.” The Chief Judge specifically finds that although COVID-19 vaccines are widely available, the COVID-19 pandemic continues 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 during much of the past 18 months. The downstream effects of COVID-19 on the Court’s operations will continue to strain judicial resources. To mitigate these effects and address the backlog of criminal cases, the Court must be able to use videoconferencing or teleconferencing for the criminal events listed in § 15002(b)(1). Reauthorization under the CARES Act will permit the proceedings listed below to proceed by videoconference or by telephone if videoconferencing is not reasonably available, at the discretion of individual judges.

Therefore, pursuant to § 15002(b)(1) of the CARES Act, the use of video conferencing, or telephone conferencing if video conferencing is not reasonably available, is authorized for the following proceedings:

- (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.

Because of the limited availability of videoconferencing for federal defendants being held at State of Alaska Department of Corrections’ facilities, videoconferencing is regularly not reasonably available, meaning that proceedings may occur with the defendant appearing by telephone, to the extent that the defendant has not lawfully waived his participation in the hearing altogether.

Video teleconferencing or telephone conferencing as authorized by this Order may take place only with the consent of the defendant, or the juvenile, after consultation with counsel. The CARES Act does not require the consent of a defendant to be in writing; therefore, such consent may be obtained in the form most practicable under the circumstances, so long as the defendant’s consent is clearly reflected in the record.

For instances in which the Federal Rules of Criminal Procedure explicitly require the consent of a defendant to be in writing,¹ if obtaining an actual signature is impractical given the health and safety concerns presented: (i) a defendant may sign a document electronically, or (ii) defense counsel or the presiding judge may sign on the defendant's behalf if the defendant, after an opportunity to consult with counsel, consents.

MGO 21-14 also provided for felony plea and sentencing proceedings to be conducted in person. Alaska, like much of the country, is currently experiencing an increased COVID-19 test positivity rate and a shortage of hospital beds.² Although the positivity rate has increased since MGO 21-14 was issued, the vast majority of people who have tested positive for COVID-19 have not been fully vaccinated.³ Pursuant to MGO 21-15, the Court requires all persons, regardless of vaccination status, to wear a mask inside the federal courthouses. In addition, all individuals are encouraged to practice social distancing. With appropriate safety measures in place, felony plea and sentencing proceedings will continue to be conducted in person unless otherwise ordered.

Individual District and Magistrate Judges retain discretion, on a case by case basis, to schedule in-person criminal proceedings and otherwise take such actions as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties. In doing so, judges must consider in each individual case whether convening an in-person hearing poses a serious threat to health and safety.

This Order will go into effect on August 24, 2021, and remain in place until further order of the Court.

DATED this 24th day of August, 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
United States District Judge

¹ See, e.g., Fed. R. Crim. P. 32(e), which requires the written consent of the defendant before a pre-plea presentence report is disclosed.

² Alaska Department of Health and Social Services Coronavirus Response Hub, AK COVID-19 Testing Dashboard, <https://experience.arcgis.com/experience/87fbb9b8619648389be49ef4b677a756/> (last visited August 23, 2021) (noting that as of August 23, 2021, Anchorage, Fairbanks, and Juneau, Alaska reported 7-day COVID-19 positivity rates of 4%, 5% and 2%, respectively).

³ State of Alaska Epidemiology Bulletin, https://content.govdelivery.com/attachments/AKDHSS/2021/07/15/file_attachments/1880370/11%20-%20VB%20Bulletin%202%20Final.pdf (July 15, 2021) (noting that the overwhelming majority of deaths, 97%, and hospitalizations, 96%, occurred in persons who were not fully vaccinated).

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