

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

<b>FILED</b> in the Middle District of North Carolina
<b>December 30, 2020</b> 7:18 am
Clerk, US District Court By: <u>JSB</u>

**IN RE:** )  
**COURT OPERATIONS UNDER THE EXIGENT ) STANDING ORDER 13**  
**CIRCUMSTANCES CREATED BY COVID-19 ) (AMENDED)**

The President of the United States has proclaimed that the worldwide pandemic novel coronavirus (COVID-19) outbreak that has reached the United States constitutes a national emergency, and the Governor has declared a state of emergency for the State of North Carolina. The Centers for Disease Control and Prevention and other public health authorities have advised taking precautions to reduce the possibility of exposure to the virus and to slow the spread of the disease. The President has issued stay-at-home guidelines, and the Governor has issued a number of Executive Orders, the latest being Executive Order No. 181, which extends through at least January 8, 2021, Phase 3 of the State’s reopening plan, which has been modified with additional restrictions to address a rise in positive COVID-19 tests following the Thanksgiving holiday. North Carolina’s number of positive tests for the virus continue to be substantial; to date more than 524,279 people in the State have contracted COVID-19, and more than 6,600 have died from the disease. The Governor continues to strongly encourage those at high risk of severe illness from COVID-19 to work from home and to avoid non-essential travel. Gatherings of 25 or more indoors are generally prohibited. While the limitations of State’s Executive Order do not apply specifically to federal court proceedings and while a vaccine has been approved but will not be fully rolled out to the general public until spring 2021, and further in order to protect public health, to reduce the size of public gatherings, and to avoid unnecessary travel until the threat of the virus can be controlled, the United States District Court for the Middle District of North Carolina hereby issues the following amended order:

The Court remains open for official business and will continue operations to the greatest extent possible under the circumstances. All deadlines in all cases are not extended and remain in effect, unless specifically addressed in this Amended Standing Order 13 or by specific order of the assigned Judge. Many Clerks' Office staff will continue to work remotely to reduce the number of employees in the courthouses, consistent with public health advisories. All litigants are urged to utilize the court's electronic filing (CM/ECF) system wherever possible. To the extent possible, especially in civil cases, Judges may elect to hold hearings and conferences via video-conferencing or telephonically.

As of this Court's initial Standing Order 13 entered March 16, 2020, and renewed thereafter, ALL CIVIL JURY TRIALS in the Middle District of North Carolina scheduled to begin before **April 2, 2021**, are CONTINUED and POSTPONED pending further order of the Court or the assigned Judge. In-person trials will resume at the earliest time it is determined safe and appropriate to do so.

As for ALL CRIMINAL CASES (including jury trials), the Court's ability to summons, process, and accommodate jurors continues to be significantly impaired due to the impact of the above public health recommendations, including social distancing, particularly as it relates to the availability of courtroom and juror space. The public health recommendations to prevent the spread of COVID-19 include avoiding close contact with people who are or may be infected, recognizing that those infected may be asymptomatic yet spread the disease which, for over 338,290 Americans, has proved deadly. Criminal proceedings involve a significant amount of close contact between all parties: courtroom personnel, counsel, witnesses, the defendants, family members, interpreters, deputy U.S. Marshals, court security officers, probation officers, and the general public. Furthermore, the Court is concerned not only about minimizing spread among

courthouse personnel but also to and within detention facilities and the Bureau of Prisons. These public health recommendations therefore also impair the Court's ability to conduct regular in-court proceedings, as the mere bringing of defendants into the courtroom increases the risk of disease spread to the defendants as well as all other participants in those proceedings. For these reasons, the Court will continue to endeavor to hold proceedings by video-conference and tele-conference to the extent authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, H.R. 748. However, while there are limitations on in-court proceedings, as described above, and limitations on space and arrangements to safely conduct jury trials and other proceedings in all criminal cases, individual Judges continue to attempt to make arrangements to conduct jury trials and hold other necessary criminal proceedings, especially where defendants do not consent to proceed by video-conference or tele-conference, on a limited basis where they can do so in conformance with public health guidance. Consequently, criminal cases will proceed as follows:

- Jury Trials. In the absence of an order in a specific case by the presiding Judge, all jury trials are CONTINUED to **April 2, 2021**, and the time period between this Court's initial Standing Order 13 on March 16, 2020, and **April 2, 2021**, will be excluded under the Speedy Trial Act, as the Court specifically finds that the ends of justice served by ordering the continuances outweigh the best interests of the public and each defendant in a speedy trial, pursuant to 18 U.S.C. § 3161(h)(7)(A). The Court specifically finds that recommendations to prevent the spread of COVID-19 include avoiding close contact with people who are or may be infected, recognizing that those infected may be asymptomatic yet spread the disease. The Court further finds that the Court is not equipped to conduct its normal docket of criminal cases in compliance with the public health guidance without causing significant risk to the health of all participants,

including the defendants. Further continuances may be issued as necessary and appropriate. However, individual Judges may set cases for jury trial on a limited basis between now and **April 2, 2021**, if appropriate health guidance can be followed, and the schedule and procedure for such trials will be set by those Judges, whose orders will control those cases.

- Sentencing and Revocation Hearings. Federal Rule of Criminal Procedure 32(b)(1) requires that a court impose sentence “without unnecessary delay,” and as for supervised release/probation violation proceedings, Federal Rule of Criminal Procedure 32.1(b)(2) requires that a court hold a hearing “within a reasonable time.” In light of the national and state emergency caused by COVID-19, and for the reasons noted above, each presiding Judge will consider continuing in-court sentencing or supervised release proceedings from any date prior to **April 2, 2021** (and perhaps from dates thereafter), until a date as soon thereafter as public health conditions permit. Litigants and counsel are advised to consult the docket for the particular case as to the status of such hearings. Continuances will permit parties, participating individuals, and facilities an opportunity to take reasonable steps to address any public health concerns as related to any transportation or appearance of individual defendants. Exceptional cases that may be considered for exemption from a continuance include those where a defendant may be considered to have served or risks over-serving sentence. Notwithstanding the above, pursuant to this Court’s Standing Order 15, as amended, which implements the CARES Act, individual Judges may schedule sentencing hearings by video-conference or tele-conference, upon the consent of the defendant after consultation with counsel and upon a finding by the presiding

Judge that further delay would cause serious harm to the interests of justice; further, individual Judges may also schedule in-court sentencing hearings, especially in cases where defendants do not consent to video-or tele-conference proceedings, at their discretion where public health guidance can be accommodated.

- Criminal Terms of Court. The Court intends to continue to hold its monthly criminal terms of court, as set forth in published scheduling orders for those terms. To the extent possible, the Court intends on conducting as many proceedings, such as change of plea, via video- or telephone conference.
- In-Court Proceedings. Any proceeding to be held in court will be guided by the Court's May 13, 2020 Standing Order 16, which sets out the conditions and limitations necessary to accommodate public health guidance. Individual Judges presiding over such proceedings may take such actions as may be lawful and appropriate to ensure fairness of the proceedings, the rights of the parties, and the protection of the public.
- Proceedings Before Magistrate Judges. Magistrate Judges will continue to preside over initial criminal proceedings, including those authorized to be conducted via video-conference and tele-conference, consistent with the Federal Rules of Criminal Procedure, statute, and the Constitution.

Because the court has developed procedures for conducting Grand Jury proceedings in accordance with public health guidance, Grand Jury proceedings may continue.

Naturalization ceremonies in the Middle District of North Carolina will be scheduled to occur from time to time under modified conditions that reduce capacity and are consistent with public health guidance.

SO ORDERED.

This the 30<sup>th</sup> day of December, 2020.

          /s/      Thomas D. Schroeder  
Thomas D. Schroeder, Chief Judge  
FOR THE COURT