

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

IN THE MATTER OF:
COURT OPERATIONS UNDER THE
EXIGENT CIRCUMSTANCES CREATED
BY THE CORONAVIRUS DISEASE 2019 (UPDATED)

20-MC-00004-17

ADMINISTRATIVE ORDER

This Order supersedes Administrative Order 20-MC-00004-15.

WHEREAS, the President of the United States has declared a state of emergency in response to the spread of Coronavirus Disease 2019 (COVID-19);

WHEREAS, the Governor of the State of New Mexico has declared a state of emergency in response to the spread of COVID-19 and has issued a state-wide “Stay at Home” instruction through April 30, 2020, and is imminently expected to extend the instruction through May 15, 2020;

WHEREAS, the Centers for Disease Control and Prevention (“CDC”) and the New Mexico Department of Health (“DOH”) have advised taking measures to slow the spread of COVID-19 and precautions to reduce the possibility of exposure to COVID-19;

WHEREAS, gatherings of people pose a threat to public health and safety, there are limitations, due to various public health directives and general health concerns, on the ability of the Court to obtain an adequate cross-section of the community for jury selection, and there are difficulties in maintaining appropriate distance from other people during both jury trials and bench trials;

WHEREAS, in response to COVID-19, the New Mexico Supreme Court has suspended all criminal and civil jury trials through May 29, 2020; and

WHEREAS, this Court continues to evaluate its response to the spread of COVID-19 and recognizes the need to assist in the preservation of public safety and health while effectively administering justice during this period of national emergency; it is hereby

ORDERED that, effective immediately and through May 29, 2020, only those persons with official court business shall enter the courthouses and U.S. Probation Offices of the United States District Court for the District of New Mexico.

Persons having official court business include:

- Court employees and contractors,
- Couriers, package and postal workers,
- Sureties or individuals posting bond,
- Persons reporting for Grand Jury duty,
- Parties/litigants,
- Counsel of record,
- Investigators or employees of counsel,
- Law Enforcement Officers and witnesses participating in hearings,
- Contract Court Interpreters,
- Individuals under supervision of the U.S. Probation Office, and
- Others specifically authorized by a presiding judge.

IT IS FURTHER ORDERED that the Clerk's Office and Probation Offices are closed to public entry. Procedures for the filing of documents and submission of payments can be found on the web sites of the [United States District Court](#) and the [United States Bankruptcy Court](#).

The Clerk's Offices are not deemed "inaccessible" for purposes of computing filing deadlines under Fed. R. Civ. P. 6(a)(3) or Fed. R. Crim. P. 45(a)(3) and are deemed "open" for the purposes of Fed. R. Civ. P. 77(c).

IT IS FURTHER ORDERED that, effective immediately, all civil and criminal trials scheduled to commence now through May 29, 2020 before any judge in any courthouse in the District of New Mexico are **CONTINUED** subject to further order of the presiding judge. This Order shall not apply to Grand Jury proceedings which may resume at the discretion of the United States Attorney for the District of New Mexico beginning May 4, 2020.

IT IS FURTHER ORDERED that the period of Court-ordered suspension of criminal trials shall be **EXCLUDED** from the computation of time under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A). The Court has concerns about the ability to seat an adequate jury at this time. The United States District Court for the District of New Mexico encompasses the entire State of New Mexico, which by land mass is the fifth largest state in the Nation. As such, jurors from the far corners of the state are routinely required to stay in hotels when they report for jury duty at this District's Courthouses. Because most hotels are operating at a reduced capacity and many restaurants have closed, finding lodging and food for jurors, once a matter of routine, will be infinitely more complicated during this public health crisis. Additionally, trials inherently involve crowded courtrooms; in addition to the parties, their attorneys and Court and security staff, sometimes 50 to 100 prospective jurors spend hours on crowded seats in a courtroom where they cannot avoid close physical proximity with others. Additionally, once selected, a minimum of twelve jurors plus alternates are seated close together in the jury box or the jury room and thus, jurors spend the majority of the day together in confined spaces. Moreover, even if the Court could obtain an adequate spectrum of jurors and manage the safe selection of a jury in the midst of the COVID-19 pandemic, the nature of jury work hampers the Court's ability to protect the safety of those jurors as recommended by the CDC and DOH. In other words, jury service does not lend itself to the social distancing practices and protocols strongly

recommended by the CDC and DOH. Accordingly, the Court is of the opinion that it cannot seat a jury while maintaining compliance with current public health and safety recommendations, thereby making jury trials practically impossible from a public health and safety standpoint.

In the context of criminal jury trials, in addition to the nearly impossible task of obtaining an adequate jury pool and seating a jury, if a trial were to proceed, it is likely that in-custody defendants, even exercising due diligence, would be denied the reasonable time necessary for effective and adequate trial preparation, given that many detention centers have implemented lockdown procedures to prevent the spread of the COVID-19 virus thus hampering the ability of counsel to meet with their clients. As additional reasons, first, the ban on groups of more than five people implemented by the Governor of New Mexico severely limits the number of people who can be involved with trial preparation meetings, including witness preparation. Second, the various shelter in place and travel restrictions implemented by various states presents logistical problems for out-of-town and out-of-state witnesses (both fact and expert) to travel to New Mexico to testify pursuant to a witness subpoena.

Based on the foregoing, the Court, balancing the factors discussed in 18 U.S.C. § 3161(h)(7)(B), concludes that the ends of justice outweigh the best interest of the public and defendants in a speedy trial, and that failure to grant such continuances of jury trials would prevent completion of full and fair proceedings and result in a miscarriage of justice. The exclusion of the suspension period is necessary to balance the health and safety of jurors, court employees, litigants, counsel, judges, and the public with the Courts' Constitutional responsibility to continue federal court operations during the COVID-19 outbreak. To the extent that any party in a particular case or the presiding judge of that case wishes to ensure that the above findings are "in the record" of any individual criminal case for which trial is delayed due

to the COVID-19 pandemic, a motion and proposed order may be filed in each case. Any Defendant seeking an exception should file a motion in his or her case and seek a ruling from the presiding judge.

IT IS FURTHER ORDERED that any requirement that personnel in the United States Marshals Service assigned to the District of New Mexico effect personal service of process under Federal Rule of Civil Procedure 4(c)(3), 28 U.S.C. § 1915(d), or 28 U.S.C. § 1916, for any cases pending in this District or any other district, is **SUSPENDED** through May 29, 2020. This order shall not apply to service of process by mail, waivers of service under Federal Rule of Civil Procedure 4(d), or service by electronic means.

IT IS FURTHER ORDERED that, in any civil case in which the United States Marshals Service has been ordered to serve process, the time for service under Federal Rule of Civil procedure 4(m) is **TOLLED** through May 29, 2020.

IT IS FURTHER ORDERED that Central Violations Bureau calendars set through May 29, 2020 are **CONTINUED**. New dates for the cases scheduled on such dockets shall be reset without the need to file any motions with the Court.

IT IS FURTHER ORDERED that all naturalization ceremonies scheduled through May 29, 2020, are **CANCELED**.

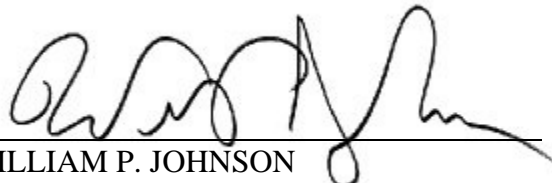
IT IS FURTHER ORDERED that all public and bar-related functions scheduled to take place in any courthouse facility in the District of New Mexico through May 29, 2020 are **CANCELED**.

The Court also provides notice to litigants, attorneys, and the public that the Courts' judges, to the extent practicable and at their discretion, will endeavor to reschedule hearings or to convert hearings to telephonic and/or video appearances in an effort to minimize the need for

persons to travel to court, understanding that certain hearings may nevertheless require personal appearances.

IT IS SO ORDERED.

FOR THE COURT:

A handwritten signature in black ink, appearing to read 'William P. Johnson', written over a horizontal line.

WILLIAM P. JOHNSON
CHIEF UNITED STATES DISTRICT JUDGE

Notices

[1:20-mc-00004 Administrative Orders](#)

U.S. District Court

United States District Court - District of New Mexico

Notice of Electronic Filing

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Case Name: Administrative Orders

Case Number: [1:20-mc-00004](#)

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Docket Text:

ADMINISTRATIVE ORDER: In the Matter of Court Operations Under the Exigent Circumstances Created by the Coronavirus Disease 2019 (Updated) (cg)

1:20-mc-00004 Notice has been electronically mailed to:

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