

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

IN THE MATTER OF:
VIDEO AND TELECONFERENCES
IN CRIMINAL PROCEEDINGS UNDER
THE CORONAVIRUS AID, RELIEF AND
ECONOMIC SECURITY ACT

No. 21-MC-00004-25

ADMINISTRATIVE ORDER

This Order supersedes Administrative Order 21-MC-00004-12.

This matter comes before the Court, on its own Motion, regarding the procedures for conducting video and telephone conferences in criminal proceedings under the “Coronavirus Aid, Relief, and Economic Security Act,” H.R. 748 (the “Act”). The Act authorizes Federal Courts to use video or telephone conferencing for certain criminal matters, provided: (a) each defendant consents to the use of such equipment, after consulting with counsel; and (b) the Judicial Conference finds emergency conditions caused by COVID 19 will materially affect the functioning of the Courts. The Judicial Conference made an emergency declaration covering the District of New Mexico on March 29, 2020.

In accordance with Sec. 15002(b)(1) of the Act, the Court hereby authorizes the use of video conferencing, or telephone conferencing if video conferencing is not reasonably available, for the following matters:

- (D) Waivers of indictment under Fed. R. Crim. P. 7(b)¹;
- (E) Arraignments under Fed. R. Crim. P. 10;
- (F) Probation and supervised release revocations under Fed. R. Crim. P. 32.1;

¹ To avoid confusion, this Order adopts the enumeration for various hearings as used in the Act.

- (G) Pretrial release revocations under 18 U.S.C. § 3148;
- (H) Appearances under Fed. R. Crim. P. 40; and
- (J) Federal Juvenile Delinquency Act proceedings under 18 U.S.C. § 403, except for contested transfer hearings and juvenile delinquency or trial proceedings.

In accordance with Sec. 15002(b)(1) of the Act, the Court further authorizes the use of telephone conferencing if video conferencing is not reasonably available, for the following matters:

- (B) Initial appearances under Fed. R. Crim. P. 5. This grant of authority does not eliminate or modify the authority to conduct initial appearances by video teleconferencing solely pursuant to Fed. R. Crim. P. 5(f).

The Court does not adopt the provisions of the Act for the following matters:

- (A) Detention hearings under 18 U.S.C. § 3142;
- (C) Preliminary hearings under Fed. R. Crim. P. 5.1; and
- (I) Misdemeanor pleas and sentencings as described in Fed. R. Crim. P. 43(b)(2).

These matters enumerated above as A, C, and I shall continue to proceed in accordance with the Federal Rules of Criminal Procedure and are not subject to the Act.

In accordance with Sec. 15002(b)(2) of the Act, the Court also finds that, depending on the location and circumstances surrounding the proceeding, certain felony pleas under Fed. R. Crim. P. 11 and felony sentencings under Fed. R. Crim. P. 32 cannot be conducted in person without seriously jeopardizing public health and safety. In the event a felony plea or sentencing presents a serious risk to health and safety, the presiding judge has discretion to use video conferencing, or telephone conferencing if video conferencing is not reasonably available. If the presiding judge elects to use video or telephone conferencing in a felony case, he or she must also make a finding that the plea or sentencing cannot be further delayed without serious harm to the interests of justice.

This Order applies to both juvenile and adult criminal cases. It will remain in effect until the Judicial Conference finds that emergency conditions no longer materially affect the functioning of the Court.

WHEREAS, the effective period of Administrative Order 21-MC-00004-12 expires on June 24, 2021 and the Judicial Conference has not yet terminated its emergency declaration, the Court has reviewed its video conference authorization and determined the need to extend the provisions herein for an additional 90 days. If the Judicial Conference fails to terminate its emergency declaration within 90 days from the entry of this Order, the Court will review this authorization and determine whether to extend these provisions further.

IT IS SO ORDERED, effective June 24, 2021.


KENNETH J. GONZALES
UNITED STATES DISTRICT JUDGE

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ADMINISTRATIVE ORDER: In the Matter of Video and Teleconferences in Criminal Proceedings Under the Coronavirus Aid, Relief and Economic Security Act (Effective on June 24, 2021) (cg)

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