

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**MISCELLANEOUS CASE NO.: 1:22-MC-42
(KLEEH)**

**IN RE:
ELEVENTH EXTENSION OF AUTHORIZATION
FOR REMOTE PROCEEDINGS IN
CRIMINAL CASE OPERATIONS
DUE TO COVID-19 RESPONSE**

ORDER

WHEREAS on March 30, 2020, the Court entered a standing order in this case pursuant to Section 15002 of the CARES Act, H.R. 748 ("CARES Act"). The order authorized the use of video teleconferencing or teleconferencing for various criminal pretrial events due to the emergency conditions arising from the COVID-19 pandemic. Pursuant to Section 15002(b)(3) of the CARES Act, this authorization remains in effect for 90 days unless earlier terminated. The Court has not terminated this initial authorization and determined that it should be extended on June 29, 2020, September 25, 2020, December 8, 2020, March 5, 2021, June 4, 2021, August 26, 2021, November 29, 2021, February 10, 2022, May 11, 2022, and most recently on August 10, 2022.

The Court has once again undertaken the review required by Section 15002(b)(3) to determine whether to further extend the authorization. Given the persistent nature of the COVID-19 virus,

the continued presence of variants of the virus in West Virginia, the continuing need to provide court officials with the requisite flexibility to address a multitude of criminal proceedings, while simultaneously assuring the safety and wellbeing of all participants, and the President's October 13, 2022, extension of the COVID-19 National Emergency Declaration, the Court finds another extension of the authorization is warranted.

NOW THEREFORE, the Court hereby ORDERS that the criminal pretrial events set forth in section 2 (a, c, d, e, f, g, h, i and j) of its prior orders in this case may, with the defendant's consent, after consultation with counsel, be conducted by video teleconferencing or teleconferencing if video teleconferencing is not reasonably available. Pursuant to Rule 5 of the Federal Rules of Criminal Procedure, initial appearances may be conducted by video teleconference with the defendant's consent. Defendants need not consult with counsel to appear for an initial appearance by video, and to the extent that any prior order(s) required consultation, this order clarifies that compliance with Rule 5 is all that is required.

This Court further finds, pursuant to Section 15002(b)(2) of the CARES Act, 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, under certain circumstances, be conducted in person without seriously jeopardizing public health and safety, and thus, the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, is permitted in such cases.

IT IS FURTHER ORDERED pursuant to Section 15002(b)(2)(A) of the CARES Act, with regard to Rule 11 felony plea or Rule 32 sentencing hearings, any judge presiding in a particular case who authorizes the use of video teleconferencing or telephone conferencing if video teleconferencing is not reasonably available, must find for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice. Under Section 15002(b)(4) of the CARES Act, this authorization may occur only with the consent of the defendant, or the juvenile, after consultation with counsel. The presiding judge in the case may authorize remote means including, but not limited to, participation of defense counsel in the video or telephone conference to facilitate consent of the defendant. Judges may also use this authority for equivalent events in juvenile cases as described in Section 15002(b)(2)(B); and

IT IS FURTHER ORDERED pursuant to Sections 15002(b)(3)(A)

and (B) of the CARES Act, the Court will review its findings and extension of authority under this order no less frequently than once every 90 days, until the last day of the covered emergency period or until the undersigned determines that the authorization is no longer warranted.

DATED: November 8, 2022

Handwritten signature of Tom S. Kleeh in black ink.

THOMAS S. KLEEH
CHIEF UNITED STATES DISTRICT JUDGE