

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

IN RE: ORDER AUTHORIZING THE
USE OF TELEPHONIC AND VIDEO
HEARINGS PURSUANT TO THE
CARES ACT FOR THE TIME PERIOD
FEBRUARY 8, 2021 THROUGH MAY
8, 2021

**ORDER AUTHORIZING THE USE OF TELEPHONIC AND VIDEO
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On November 24, 2020, this court entered an Order pursuant to the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) authorizing the use of video/telephonic hearings for specified matters in criminal cases through February 7, 2021. This Order modifies and supersedes the November 24, 2020 Order and is entered in response to the COVID-19 pandemic in the State of Hawaii and the continuing need to limit the number of individuals entering the courthouse in order to protect the health and safety of the public, court employees, counsel, and parties. This Order is effective on February 8, 2021 and runs through May 8, 2021.

Pursuant to the CARES Act, on March 29, 2020, the Judicial Conference of the United States found that “emergency conditions due to the

national emergency declared by the President under the National Emergencies Act (50 U.S.C. § 1601, *et seq.*) with respect to COVID-19 have materially affected and will materially affect the functioning of the federal courts generally.” This finding is still effective. Thus, as Chief Judge for the United States District Court for the District of Hawaii, acting pursuant to § 15002(b) of the CARES Act, the authority granted by the Judicial Conference of the United States, and based on my own motion, I make the following findings and hereby ORDER:

1. Pursuant to the authority granted under § 15002(b)(1) of the CARES Act, I hereby authorize judges in the United States District Court for the District of Hawaii, with the consent of the defendant or the juvenile after consultation with counsel, to use video conferencing, or telephonic conferencing if video conferencing is not reasonably available, for the following matters:

- (A) Detention hearings under section 3142 of Title 18, United States Code;
- (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 section 3148 of Title 18, United States Code;
- (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; and
- (J) Proceedings under chapter 403 of Title 18, United States Code (commonly known as the “Federal Juvenile Delinquency Act”), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings.

2. Certain 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 be conducted in person without seriously jeopardizing public health and safety. First, the court is aware that various Federal Bureau of Prison (“BOP”) facilities throughout the nation have experienced severe COVID-19 outbreaks. It is essential that the court protect those housed at BOP facilities, including Honolulu’s Federal Detention Center (“FDC”), from contracting COVID-19 while outside a BOP facility and then bringing it into that facility. Second, some defendants reside in a communal setting such as a residential treatment program, clean-and-sober residence, women’s shelter, or group transitional home. It is also essential that the court protect those living in communal settings from contracting COVID-19 while outside the communal setting and then bringing it into that setting. Third, some defendants may have one or more recognized vulnerabilities to COVID-19, and the potential exposure to

COVID-19 would result in seriously jeopardizing public health and safety. Thus, the court finds that for those incarcerated at a BOP facility (including the FDC), for those living in a communal setting, and for any individual who has a recognized underlying medical condition that the United States Centers for Disease Control and Prevention recognizes as being an increased risk for severe illness from COVID-19, or any person caring for or residing in close quarters with such a person, 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 be conducted in person without seriously jeopardizing public health and safety. As a result, if a district judge in an individual case finds, for specific reasons, that a felony plea or sentencing cannot be further delayed without serious harm to the interests of justice, a judge may, with the consent of the defendant or the juvenile after consultation with counsel, conduct a felony plea or sentencing by video conferencing, or telephonic conferencing if video conferencing is not reasonably available. This authority extends to equivalent plea, sentencing or disposition proceedings under the Federal Juvenile Delinquency Act.

3. This Order is effective as of February 8, 2021 and remains effective through May 8, 2021, unless earlier terminated. If the emergency persists past May 8, 2021, I will review the situation for possible extension of authority pursuant to the provisions of the CARES Act. Notwithstanding the foregoing, pursuant to the provisions of the CARES Act, this authority shall terminate on the

last day of the covered emergency period or the date on which the Judicial Conference of the United States finds that emergency conditions due to the national emergency declared by the President under the National Emergencies Act with respect to the COVID-19 virus outbreak no longer materially affect the functioning of either the Federal courts generally or the District of Hawaii specifically.

IT IS SO ORDERED:

DATED: Honolulu, Hawaii, February 5, 2021.



/s/ J. Michael Seabright
J. Michael Seabright
Chief United States District Judge

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