

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAR 30 2020

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

at 3 o'clock and 5 min. PM
SUE BEITIA, CLERK *SB*

IN RE: ORDER AUTHORIZING THE
USE OF TELEPHONIC HEARINGS
PURSUANT TO THE CARES ACT

**ORDER AUTHORIZING THE USE OF TELEPHONIC
HEARINGS PURSUANT TO THE CARES ACT**

On March 13, 2020, the President of the United States issued a proclamation declaring a National Emergency in response to the Coronavirus Disease-2019 ("COVID-19") pandemic pursuant to the National Emergencies Act (50 U.S.C. § 1601, *et seq.*). On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), which the President signed into law on the same day. The CARES Act authorizes the Judicial Conference of the United States to provide authority to Chief District Judges to permit the conduct of certain criminal proceedings by video or audio conference.

On March 29, 2020, the Judicial Conference of the United States found that, pursuant to the CARES Act, "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." 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. Emergency conditions due to the COVID-19 virus outbreak will materially affect the functioning of the courts within the District of Hawaii. Further, the warden of the Federal Detention Center in Honolulu, Hawaii ("FDC Honolulu") has informed me by written declaration that, given the resources necessary to conduct hearings by video conferencing rather than by telephone, and given the overall strain on FDC Honolulu's resources caused by the COVID-19 pandemic, FDC Honolulu does not have the staff or resources to conduct hearings by video conferencing as opposed to telephone conferencing. Thus, I find that the use of video conferencing is not reasonably available for use.

Given these findings, and 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 telephonic conferencing 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. 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 presiding judges in individual cases find, for specific reasons, that felony pleas or sentencings in those cases cannot be further delayed without serious harm to the interests of justice, judges may, with the consent of the defendant or the juvenile after consultation with counsel, conduct those

proceedings by telephonic conference. This authority extends to equivalent plea, sentencing or disposition proceedings under the Federal Juvenile Delinquency Act.

3. This order is effective as of April 1, 2020. This authorization is effective for ninety (90) days unless earlier terminated. If the emergency persists longer than ninety (90) days, 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, March 30, 2020.



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

In Re: Order Authorizing the Use of Telephonic Hearings Pursuant to the Cares Act, Order Authorizing the Use of Telephonic Hearings Pursuant to the Cares Act