
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

IN THE MATTER OF COURT
PROCEEDINGS AND COURT
OPERATIONS DURING THE
CORONAVIRUS (COVID-19)
PANDEMIC

**GENERAL ORDER
22-002**

The Court has entered numerous General Orders in response to the ongoing Coronavirus Disease (COVID-19) outbreak in Utah and around the nation.¹

- General Order 20-008, entered on March 12, 2020, confirmed that the Federal Courthouse in Salt Lake City remains open with restricted access for certain visitors.
- On March 16, 2020, the Court entered General Order 20-009, suspending all petit jury and grand jury activities in the District through May 1, 2020. In General Order 20-009, the Court also continued all trial-related deadlines in criminal cases, entered findings excluding certain time under the Speedy Trial Act, vacated hearings for most matters set between March 17 and March 31, and provided guidance concerning numerous other aspects of court operations.
- On March 23, 2020, the Court entered General Order 20-010, providing certain protections for attorney-client communications impacted by the COVID-19 crisis and establishing protocols for various criminal proceedings and United States Probation Office activities.
- General Order 20-011 was entered March 31, 2020, making findings implementing the emergency provisions of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

¹ These General Orders and additional information can be found on the Court's website:
<https://www.utd.uscourts.gov/united-states-district-courts-district-utah-covid-19-information-center>.

- On April 28, 2020, the Court entered General Order 20-012, making additional findings related to the Speedy Trial Act, continuing all civil and criminal trials through June 15, 2020, and providing guidance concerning other court functions.
- General Order 20-017 was entered on June 15, 2020. This Order continued all grand jury and petit jury activities through August 1, 2020; included additional findings relating to the Speedy Trial Act and excluded from the Act time through August 1, 2020; and provided new information concerning a plan for phased resumption of court activities unanimously adopted by the judges.
- On June 26, 2020, the Court entered General Order 20-020, extending the emergency provisions of the CARES Act for an additional 90 days.
- The Court entered General Order 20-021 on July 29, 2020. This Order generally continued the status quo throughout the Court and extended relevant deadlines through September 1, 2020. It also describes the Court's four phase reopening plan and the gating criteria.
- General Order 20-026 was entered August 26, 2020. Most notably, this Order announced the Court's planned September 1, 2020, transition to Phase I of the Court's phased reopening plan. This allowed certain critical in-person hearings to proceed in criminal cases. All jury trials in criminal and civil cases were continued, though critical grand jury proceedings continued on a limited basis.
- The Court entered on September 28, 2020, General Order 20-028, extending the emergency provisions of the CARES Act for an additional 90 days.
- General Order 20-029 was entered on September 30, 2020. This Order preserved the Court's status in Phase I of its phased reopening plan. The Order continued all jury trials through November 2, 2020, clarified procedures for critical Grand Jury operations in Phase I, and left in place existing restrictions against in-person civil and criminal hearings.
- The Court entered on December 28, 2020, General Order 20-033, extending the emergency provisions of the CARES Act for an additional 90 days.
- The court entered General Order 20-030 on October 29, 2020. That Order explained that the Court remained in Phase I of the Court's phased reopening plan. Most notably, the Order continued jury trials through February 1, 2021.

- General Order 21-001 was entered on January 22, 2020, extending Phase I of the Court's phased reopening plan through April 1, 2021.
- The Court moved to Phase II of its phased reopening plan and began limited criminal jury trials under authorization included in General Order 21-003, entered on March 16, 2021.
- On June 21, 2021, the Court entered General Order 21-006, extending the emergency provisions of the CARES Act for an additional 90 days.
- The Court entered on June 30, 2021 General Order 21-007, generally maintaining the Phase II status quo through July 31, 2021, in view of disconcerting trends in COVID-19 cases and positivity rates in the District.
- On July 22, 2021, the Court entered General Order 21-009. That Order extended Phase II reopening restrictions through August 31, 2021, in recognition of data surrounding the prevalence of the COVID-19 Delta variant throughout Utah.
- The Court entered General Order 21-12 on August 27, 2021, extending Phase II of the Court's phased reopening plan through October 31, 2021.
- The Court entered on October 1, 2021, General Order 21-014, extending the emergency provisions of the CARES Act for an additional 90 days.
- On October 27, 2021, the Court entered General Order 21-015, continuing Phase II of the Court's phased reopening plan through January 31, 2022.
- And most recently, on January 3, 2022, the Court entered General Order 22-001, extending the emergency provisions of the CARES Act for an additional 90 days.

Notwithstanding that many of the extension dates initially set forth in the most recent General Orders are still several weeks away, conditions related to the Omicron variant and its impact in the District require immediate modification of the Court's current activities. For the reasons explained below, the Court now moves immediately back to Phase I of the Court's phased reopening plan. Jury trials scheduled between now and February 14, 2022, are vacated.

Utah and the nation remain in the midst of the most serious global pandemic in over a century. And the rapid increase of cases resulting from the widespread circulation of the highly contagious Omicron variant presents the possibility that the next

several weeks may see the highest daily count totals in Utah since the pandemic began. The Judicial Conference of the United States has found that emergency conditions due to the national COVID-19 crisis have affected and continue to materially affect the functioning of the federal courts. The Centers for Disease Control and Prevention (CDC) continues to issue and modify guidance to combat the spread of the disease, and to promote the health and well-being of the nation. The Court is closely monitoring the CDC's guidance as well as various directives from all branches and levels of government.

Globally, it is estimated that over 280 million people have been infected by the COVID-19 virus, resulting in nearly 5.5 million deaths. It's likely that those numbers significantly underestimate the actual cases and deaths. There are nationwide now nearly 55 million cases of Americans infected with COVID-19, and over 820,000 confirmed deaths. Utah has now confirmed more than 650,000 cases, resulting in nearly 28,000 hospitalizations and more than 3,800 deaths. Positive case counts are accelerating in Utah, throughout the nation, and around the globe. Daily case counts in Utah are near or above the highest point since the pandemic began. Utah posted this week the highest daily number of new cases and deaths, and the seven-day rolling case average is at the highest point since the pandemic began. COVID-19 test positivity rates in Utah suggest significant community spread, and infection rates are climbing rapidly in response to the new Omicron variant. The state has been unable for many months reduce infection and diminish serious disease, particularly among those who are not vaccinated. Vaccinations are proceeding at disappointing levels in Utah where the percentage of vaccinated persons in Utah remains below rates in many neighboring states, and daily vaccine administrations are insufficient to reverse the current trends anytime soon.

Taking into account all of the available and relevant data, including the numbers of daily new cases and hospitalizations, test positivity rates, ICU capacity in Utah hospitals, the availability of vaccines and the vaccination rates, the introduction and spread of several variants of the COVID-19 virus with unknown implications, as well as enhanced treatment capabilities for those infected with COVID-19, the Court concludes the pandemic continues to present an ongoing health emergency in Utah. The Court further concludes the recent significant deterioration in conditions presents an acute risk

to the court community and the community at-large. The personal safety of the court community and those we serve remains the Court's top priority. While safety protocols and other measures have enabled the court to safely operate for many months in Phase II of the Court's phased reopening plan, the Court concludes it can no longer do so.

After careful consideration of publicly available data; following consultation with appropriate stakeholders; and consistent with the Court's phased reopening plan and the procedures outlined in General Orders [20-029](#), [20-030](#), and [21-001](#) – the Court will immediately return to Phase I of its phased reopening plan, and will remain in Phase I through February 14, 2022, as described below.² More information is available on the Court's website: [Resumption of Certain In-Person Court Proceedings](#) and [COVID-19 Information Center](#).

All COVID-19 safety measures identified on the Court's website and at the Courthouse are mandatory. A list of the required safety measures both for those vaccinated and those not vaccinated can be found on the [COVID-19 Information Center webpage](#).

Subject to modification as conditions require, it is **HEREBY ORDERED**:

1. **Jury Trials:** All in-person civil and criminal jury trials set to commence in the Orrin G. Hatch Courthouse in Salt Lake City prior to February 14, 2022, are **VACATED**.³ Subject to scheduling limitations resulting from limited capacity for the number of jury trials the Court can safely accommodate when trials resume, jury trials affected by this change will receive priority for new settings at the earliest available dates and times convenient to the court, counsel, and parties. Among the trials affected by this General Order, criminal jury trials will receive special consideration and priority. Trials presently set to begin on or after February 14, 2022, will proceed in the manner described in General Order 21-015.

² The Court's Southern Region proceedings in St. George are addressed separately below.

³ Provisions of this General Order pertaining to in-person jury trials do not apply to fully remote jury trials.

2. **Speedy Trial Act:** For the reasons stated above relating to the ongoing COVID-19 threat, and for the reasons previously discussed in General Orders 20-009, 20-010, 20-011, 20-012, 20-017, 20-021, 20-026, 20-029, 20-030, 21-001, 21-003, 21-007, 21-009, 21-012, and 21-015, including the procedural and practical challenges to seating a jury in the midst of the COVID-19 pandemic the period of time between January 1, 2022, and February 14, 2022, is hereby **EXCLUDED** from the respective speedy trial calculations for both the return of an indictment and the commencement of trial within the District, pursuant to 18 U.S.C. § 3161(h)(7)(A). An “ends of justice” exclusion under the Speedy Trial Act is disfavored and “meant to be a rarely used tool for those cases demanding more flexible treatment.”⁴ The Court nevertheless concludes an “ends of justice” finding is necessary and appropriate in the District of Utah at this time. The ongoing health emergency arising from the COVID-19 pandemic continues to demand modifications to court practices to protect public health. Courts and court operations are necessarily social operations, involving many people.

Mindful of the Court’s constitutional responsibility to continue providing mission-critical functions of the federal judiciary – even during the COVID-19 outbreak – the need to protect the public health in the midst of the ongoing deadly COVID-19 pandemic outweighs the important rights of individual defendants and the public to speedy trials at this time. The Court reaches this conclusion after carefully balancing the factors set forth in 18 U.S.C. § 3161(h)(7)(B). Specifically, the Court finds that the exclusion of time through February 14, 2022, from the respective speedy trial periods, is necessary to protect the health and safety of jurors and prospective jurors, court staff and employees, criminal defendants, counsel, law enforcement personnel, and the public.

⁴ *United States v. Toombs*, 574 F.3d 1262, 1269 (10th Cir. 2009).

In addition, in-custody defendants in this District are held at local jails under the direct control of the State of Utah and individual counties. The Court continues to experience restrictions on access to federal defendants during this outbreak. Travel restrictions further impair the ability of counsel and witnesses to appear for Grand Jury proceedings or trial.

Beyond that, the health risks associated with trial remain acute in Utah and throughout the nation. Trial requires that jurors, counsel, parties, witnesses, court personnel, and judges all be present in the courtroom in relatively close proximity. The Court concludes it is no longer possible to safely host even one jury trial at a time in space available in the courthouse. Empaneling and hosting a jury, including facilitating jury selection and jury deliberations, all with due regard for health and safety, is simply not currently possible in the physical facilities available to the court. Video and audio conferencing, used for hearings, are not available for criminal jury trials. Counsel's ability to adequately prepare for trial, including locating and consulting with witnesses, and defense counsel's ability to effectively confer with defendants, are also greatly diminished under the present circumstances.

Judges are encouraged to enter speedy trial orders in the cases over which they preside. Judges presiding over criminal proceedings may take such actions consistent with this Order as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties – particularly where defendants are detained pending trial. Any motion by a criminal defendant seeking an exception to any provision of this Order should be directed to the assigned judge.

Trial-Related Deadlines: Except as otherwise ordered by the presiding judges in individual cases (including, but not limited to, those cases proceeding to trial under the Court's limited resumption of jury trials pursuant to this General Order) all trial-related deadlines in criminal cases

(including, but not limited to, deadlines concerning motion cutoff dates, proposed jury instructions, proposed voir dire, proposed verdict forms, plea cutoffs, etc.) are **CONTINUED**.

Individual judges may continue trial-related deadlines in civil cases at their discretion. Questions concerning trial-related deadlines should be directed to the assigned judge.

3. **Grand Jury:** Consistent with Phase I of the Court's phased reopening plan, Grand Jury proceedings in the District are now restricted and limited to "critical" proceedings only. The United States Attorney's Office should coordinate all requested Grand Jury proceedings with Chief Magistrate Judge Dustin Pead. Without the availability of normal Grand Jury proceedings, the Court recognizes there will necessarily be unavoidable delays presenting matters for consideration and for returns of indictments. As a result of these unavoidable delays, the 30-day time period for filing an indictment is tolled as to each defendant through February 28, 2022. See 18 U.S.C. § 3161(b). Questions concerning Grand Jury scheduling should be directed to the United States Attorney's Office.

4. **Search Warrants:** Between January 1, 2022, and February 14, 2022, all search warrants and other applications (including, among other things, trap/trace and pen registers), as well as new criminal complaints for most cases shall be submitted via email to the chambers email box of the duty Magistrate Judge:
 - a. For January 2022 to utdecf_romero@utd.uscourts.gov for Magistrate Judge Romero;
 - b. For February 2022 to utdecf_oberg@utd.uscourts.gov for Magistrate Judge Oberg; and
 - c. In matters arising in the Southern Region, with St. George location designations, such materials shall be submitted to utdecf_kohler@utd.uscourts.gov for Magistrate Judge Kohler.

The courtroom deputy for the assigned judge will then communicate with the sender to arrange the resolution of such matters via electronic means (teleconference or video), as appropriate.

5. **Title III Applications:** All Title III applications shall be submitted via email to Chief Judge Shelby's courtroom deputy, Mary Jane McNamee. The courtroom deputy will then communicate with the sender to arrange the resolution of such matters via electronic means (teleconference or video), as appropriate.

6. **Criminal Hearings**

- a. **Critical Hearings:** Critical hearings in criminal cases may continue in-person as ordered by the presiding judge in each case. The default will continue to be that hearings will be conducted by videoconference or teleconference, as discussed below. Nevertheless, in view of health risks (particularly to incarcerated defendants) and limited access to federal defendants in local jails, critical hearings may, in the discretion of the presiding judge in each case, be set in-person or, if permitted by the CARES Act and the General Orders entered by the Court enacting the emergency provisions of the CARES Act, remotely by audio or video with consent of the defendant. Critical hearings generally include motions to suppress, evidentiary hearings, changes of plea, sentencings, initial appearances, and detention hearings. After meeting and conferring, the parties in cases before the Court may file individual or stipulated motions seeking an in-person critical hearing or to opt-out of an in-person critical hearing for counsel or for the defendant. A motion must provide a reasonable basis for the relief requested, which may include that counsel or the defendant are in a high-risk category or care for an immediate family member who is especially vulnerable, jail policies concerning isolation and transport, or the need to present evidence. The Court's findings in General Orders 20-011, 20-020, 20-028, 20-033, 21-006, 21-014, and 21-015 remain in

effect due to the limitations and health concerns that persist as a result of the COVID-19 pandemic. This means that the emergency provisions of the CARES Act remain available to defendants who wish to waive their right to appear in-person even for critical hearings. In such instances, critical hearings will be conducted by videoconferencing or teleconference.

- b. **Other Hearings**: In-person hearings are available in Phase I only for critical matters, as determined by the presiding judge in each case. Judges may set critical matters for hearing in-person or remotely. Parties desiring that a hearing proceed in a manner other than that initially set by the presiding judge should contact the presiding judge's chambers for direction concerning the procedures for requesting that a hearing be changed. Judges are encouraged to consider the effects of the ongoing pandemic when deciding requests that hearings proceed remotely or in-person.
- c. **Miscellaneous**: The protocols set forth in General Order 20-010 are adopted and incorporated herein. Those provisions in General Order 20-010 relating to Attorney-Client Privilege (Paragraph 1) and Pretrial Services Reports (Paragraphs 2-5) are **EXTENDED** through February 14, 2022. Except as specified above, appearances in any criminal hearings ordered by summons are **CONTINUED** through February 14, 2022. Judges before whom such appearances were scheduled are encouraged to notify those summoned of a new appearance date.

7. **Central Violations Bureau Calendars**: The Central Violations Bureau (CVB) calendars set between January 1, 2022 and February 14, 2022 will not be held in person, absent approval from Chief Judge Shelby. Such calendars may, however, proceed electronically at the discretion of the presiding judge.

8. **Reentry and Specialty Courts**: In-court reentry (specialty court) hearings and activities are **SUSPENDED** through February 14, 2022. At the

discretion of the presiding judicial officer, these courts may be conducted remotely utilizing existing telephonic or video conference options in a manner that does not require in-person participation or that otherwise jeopardizes the health and safety of the participants, the program staff, or court representatives. Any deviation from these restrictions must be approved in advance by Chief Judge Shelby.

9. **Civil Hearings and Bench Trials:** Consistent with Phase I of the Court's phased reopening plan, in-person civil hearings and in-person bench trials are available only in critical matters as determined by the presiding judge in each case. Judges may set critical matters for hearing in-person or remotely. Parties desiring that a hearing proceed in a manner other than that initially set by the presiding judge should contact the presiding judge's chambers for direction concerning the procedures for requesting that a hearing be changed. Judges are encouraged to consider the effects of the ongoing pandemic when deciding requests that hearings proceed remotely or in-person.

10. **Public and Bar-Related Functions:** Except as otherwise authorized by Chief Judge Shelby, all public and bar-related functions scheduled to take place at the federal courthouse in Salt Lake City through and including February 14, 2022, are **CANCELED**. This includes meetings of the American Inns of Court, continuing education events, school tours, informational meetings, social functions, and Immigration and Naturalization ceremonies. Questions concerning events should be directed to the Clerk's Office at 801-524-6100.

11. **Public Access:** The Orrin G. Hatch Courthouse in Salt Lake City shall remain open for mission-critical functions of the judiciary, but the public and members of the bar are discouraged from coming to the courthouse unless necessary for official court-related activities, including filing documents that

cannot be submitted electronically, attending in-person hearings described above, and the like.

Those coming to the Orrin G. Hatch Courthouse in Salt Lake City must comply with all governmental guidelines, including the use of personal protection such as masks and physical distancing. In view of the diminished effect of cloth masks to protect against the new Omicron COVID-19 variant, visitors to the Courthouse will be required at all times to properly wear over the nose and mouth a suitable KN95, KF94, N95, or three-ply surgical mask. If visitors do not have such a mask, one will be provided by the Court at the entrance to the building. A list of the required safety measures both for those vaccinated and those not vaccinated can be found on the [COVID-19 Information Center](#) webpage.

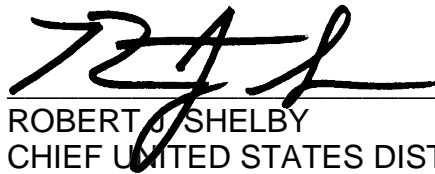
12. **Clerk's Offices:** The United States Bankruptcy Court for the District and other court services shall remain open pending further order of the Court, but business hours and means of access may be limited. Specific information about business hours will be available on each Court unit's internet site.

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13. **Southern Region Operations in St. George, Utah:** The Court's Southern Region operations are housed in space leased within the State of Utah St. George Courthouse. That facility and its operation is controlled by the State of Utah. Among other things, this means the availability of in-person Southern Region proceedings are subject to decisions by the State of Utah and Washington County. As the resident United States District Judge in St. George, Judge David Nuffer is granted emergency authority to promulgate rules and procedures for Southern Region proceedings consistent with State of Utah and Washington County directives and COVID-19 conditions within the Southern Region.

SO ORDERED this 5th day of January, 2022.

BY THE COURT:



ROBERT J. SHELBY
CHIEF UNITED STATES DISTRICT JUDGE