
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
20-029**

The Court has entered a number of 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 20-17 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 20-20, extending the emergency provisions of the CARES Act for an additional 90 days.
- The Court entered General Order 20-21 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 20-26 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.
- Most recently, the Court entered on September 28, 2020, General Order 20-28, extending the emergency provisions of the CARES Act for an additional 90 days.

Many of the extension dates initially set forth in those General Orders are now approaching.

The Court continues to monitor closely the state of the health crisis in Utah and around the nation. President Trump's March 13, 2020 National Emergency declaration remains in effect. Governor Herbert recently declared a new state of emergency on August 20, 2020, and while restrictions have been imposed and relaxed, new daily cases of COVID-19 in Utah have risen sharply in recent weeks. The World Health Organization advises that the global pandemic is not subsiding. Globally, over 33,000,000 people have been infected, and nearly 1,000,000 have died from the disease. Finally, the Judicial Conference of the United States has found that

emergency conditions due to the national COVID-19 crisis have affected and will materially affect the functioning of the federal courts.

The Centers for Disease Control and Prevention (CDC) continues to issue 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 developing guidance as well as various directives from all branches and levels of government. Among other things, the CDC recommends that all Americans avoid close contact with others (*i.e.*, being within six feet) and wear cloth face coverings in public or when around others. These and other measures are in response to increased concerns about the extent of asymptomatic transmission of the virus and the potential for the virus to spread through mere conversations or breathing, in addition to airborne transmission through coughing or sneezing.

To this date, there are nationwide now over 7,000,000 confirmed cases of Americans infected with COVID-19, resulting in over 200,000 deaths. Utah has now confirmed over 70,000 cases, resulting in nearly 4,000 hospitalizations and more than 450 deaths. Among other things, the Salt Lake County area has experienced significant outbreaks of the virus in many of its jails. The available evidence continues to suggest difficulty tracking the real spread of COVID-19 because large numbers of infections remain undetected due to asymptomatic carriers, varying degrees of symptoms, a lack of adequate testing, and other factors. Some scientific organizations estimate the total number of cases in the United States could be as high as ten times the number of reported cases. Overall, the daily number of reported new infections is generally increasing again both in Utah and throughout the United States.

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 20-17 and 20-26 – the Court will remain in Phase I of its phased reopening plan, as described below.² Subject to modification as conditions require, it is **HEREBY ORDERED**:

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

1. **Jury Trials:** All civil and criminal jury trials are **CONTINUED** through November 2, 2020, pending further order of the Court. The Court may issue further orders concerning future continuances as are necessary and appropriate. Questions concerning prospective scheduling of trial dates should be directed to the assigned judge.

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 2020-09, 2020-010, 2020-011, 2020-012, 2020-17, 2020-21, and 2020-26, including the procedural and practical challenges to seating a jury in the midst of the COVID-19 pandemic the period of time between October 1, 2020, through November 2, 2020, 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.”³ The Court nevertheless concludes an “ends of justice” finding is necessary and appropriate in the District of Utah at this time. The expanding number of COVID-19 infections, hospitalizations, and deaths nationally and in Utah, 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 November 2, 2020 from the respective speedy trial periods, is

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

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. 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 is experiencing significant 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 current environment makes it nearly certain that the Court cannot obtain an adequate spectrum of jurors to fairly conduct trials. Moreover, the health risks associated with trial are acute. Trial requires that jurors, counsel, parties, witnesses, court personnel, and judges all be present in the courtroom in relatively close proximity. Empaneling a jury, conducting a trial, and facilitating 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 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 these 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.

3. **Trial-Related Deadlines:** 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.) scheduled to begin trial before November 2, 2020 are

CONTINUED, subject to case-specific orders entered by the judge presiding in individual cases.

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.

4. **Grand Jury:** Consistent with Phase I of the Court's plan for resuming operations, critical Grand Jury proceedings may continue on a week-to-week basis as conditions in the District permit. The United States Attorney's Office is directed to continue coordinating those proceedings with Chief Magistrate Judge Dustin B. Pead. Because Grand Jury proceedings remain limited to critical matters due to the COVID-19 pandemic, the 30-day time period for filing an indictment is tolled as to each defendant until this Order terminates. See 18 U.S.C. § 3161(b). Questions concerning grand jury scheduling should be directed to the United States Attorney's Office.

5. **Search Warrants:** Between October 1, 2020, and November 2, 2020, 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. utdecf_oberg@utd.uscourts.gov for Judge Oberg; and
 - b. In matters arising in the Southern Region, with St. George location designations, such materials shall be submitted to utdecf_kohler@utd.uscourts.gov for Judge Kohler.

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. **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.

7. **Criminal Hearings**

a. **Critical Hearings:** Consistent with entering Phase I of the Court's plan for resuming operations, critical criminal hearings may, in the discretion of the presiding judge in each case, continue 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 2020-11, 2020-20, and 2020-28 remain in effect due to the extraordinary 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**: After meeting and conferring, any party in a criminal case may file a motion requesting an in-person hearing for a matter not listed above as a critical hearing. The filing party must state the other party's position on the motion. No response to such a motion is required unless ordered by the Court. Any such motion should account for the individual jail requirements associated with transporting in-custody defendants. Jail information may be obtained from the courtroom deputy for each presiding judge. At the discretion of the assigned judge or upon request of the parties, videoconferencing and teleconferencing services may be made available for hearings.
 - 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 November 2, 2020. Except as specified above, appearances in any criminal hearings ordered by summons are **CONTINUED** through November 2, 2020. Judges before whom such appearances were scheduled are encouraged to notify those summoned of a new appearance date.
8. **Central Violations Bureau Calendars**: The Central Violations Bureau (CVB) calendars set between October 1, 2020 and November 2, 2020 are **CANCELED**. The Court will direct that new hearing notices for mandatory appearances be delivered for dates after November 2, 2020, at the discretion of the assigned judge.
9. **Reentry and Specialty Courts**: In-court reentry (specialty court) hearings and activities are **SUSPENDED** through November 2, 2020. 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.

10. **Civil Hearings and Bench Trials:** Consistent with the Phase I provisions of the Court's phased reopening plan, presiding judges retain discretion to proceed with critical civil hearings and critical bench trials - as necessary and appropriate in individual cases. Any party, after meeting and conferring, may file a motion providing the basis for seeking an in-person bench trial or any other type of civil hearing the parties deem critical. If the motion is granted, other parties are permitted to file a motion to opt out of attending in person. For the reasons detailed above, including the unprecedented and serious health concerns associated with the current pandemic, in-person civil hearings should be held only in exceptional circumstances. This is so even in emergency matters, including applications for temporary restraining orders or injunctions. Absent specific and compelling exceptional circumstances, all civil hearings should be conducted remotely utilizing existing telephonic or video conference options. If a judicial officer concludes that a civil hearing or bench trial is critical and must be conducted in-person, that judge should adopt stringent protocols in consultation with counsel, and consistent with CDC guidance and the Court's plan for phased resumption of operations, to ensure the safety of the parties, witnesses, counsel, and court staff.

11. **Public and Bar-Related Functions:** All public and bar-related functions scheduled to take place at the federal courthouse in Salt Lake City between October 1, 2020, and November 2, 2020, 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 rescheduling these events should be directed to the Clerk's Office. Chief Judge Shelby may make exceptions to this restriction on a case-by-case basis.

12. Public Access: The federal 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 criminal hearings described above, and the like. The St. George Courthouse remains closed, but is proceeding with mission-critical functions through electronic and remote means.

Those coming to the federal courthouse in Salt Lake City must comply with all governmental guidelines, including the use of personal protection such as masks and physical distancing.

13. 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.

14. 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 are 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 30th day of September, 2020.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'R. J. Shelby', written over a horizontal line.

ROBERT J. SHELBY
CHIEF UNITED STATES DISTRICT JUDGE