
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
21-003**

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 20-017 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.

- Most recently, General Order 21-001 was entered on January 22, 2020, extending Phase I of the Court's phased reopening plan through April 1, 2021.

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 COVID-19 health crisis in Utah and around the nation. Notwithstanding that the number of vaccinated Utahns is rapidly increasing and new daily cases of COVID-19 in Utah are consistently falling in recent months, we remain in the midst of the most serious global pandemic in over a century. Globally, nearly 120 million people have been infected, and more than 2,600,000 have died from the disease. 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. State and federal courts are only now beginning to carefully move towards safely reopening.

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 guidance as well as various directives from all branches and levels of government. Among other things, the CDC strongly 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.

There are nationwide now over 29 million confirmed cases of Americans infected with COVID-19, resulting in over 530,000 deaths. Utah has now confirmed nearly 400,000 cases, resulting in over 15,000 hospitalizations and more than 2,000 deaths. COVID-19 test positivity rates in Utah remain above levels necessary to reduce community spread. Vaccinations are proceeding in Utah but the percentage of vaccinated persons in Utah is less than neighboring states. 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 of 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. While the personal safety of the court community and those we serve remains the Court's top priority, conditions have improved to a point that the Court finds those safety concerns can be adequately protected while simultaneously expanding access to mission critical judicial functions with the limitations described below.

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 move to Phase II of its phased reopening plan effective April 1, 2021, as described below.² The Court's web site has further information about the [Resumption of Certain In-Person Court Proceedings](#) and in the [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—including masks covering the nose and mouth, social distancing, hand sanitizing, and not entering the Court during or after recent COVID exposure or symptoms—can be found on the Court's COVID-19 Information Center here: <https://www.utd.uscourts.gov/covid-19-information-center>.

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

1. **Jury Trials:**

- a. **Criminal Jury Trials:** Utilizing the health and safety procedures set forth in the [Court's Petit Jury Trial Plan](#), the Court concludes that conditions now safely allow for resumption of limited jury trials – one trial at a time in the courthouse. Beginning April 29, 2021, the Court will begin continuous, consecutive criminal jury trials. All pending criminal cases awaiting trial have been triaged according to numerous

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

criteria, including the age of the case, the custodial status of the defendant(s), the length of the trial required, and the availability of the presiding judge, counsel, and witnesses. Trials are now scheduled according to those criteria in a manner to ensure uninterrupted use of the special proceedings courtroom for the foreseeable future. The Court will continue to monitor conditions, expecting that conditions will at some point permit the court to simultaneously host more than one petit jury at a time. Additional criminal jury trials will be scheduled accordingly. Questions concerning prospective scheduling of criminal jury trials should be directed to the presiding judge in each case.

- b. **Civil Jury Trials:** Constitutional considerations mandate that certain critical criminal jury trials take precedence over pending civil matters when allocating scarce available space and trial resources. For this reason, all in-person civil jury trials are **CONTINUED** through June 30, 2021, pending further order of the Court. All in-person jury trial dates preceding that date are **VACATED**. The Court may issue further orders concerning future continuances as are necessary and appropriate. As noted above, conditions will eventually permit more than one jury trial at a time in the courthouse. At some point, some judges will be available to preside over civil jury trials – even as some criminal jury trials before other judges remain pending. Balancing constitutional considerations, the competing interests of civil litigants and criminal defendants, safety considerations, and courtroom availability, prospective scheduling of civil jury trials will proceed as soon as practicable after the Court enters Phase III of its reopening plan. Questions concerning prospective scheduling of trial dates should be directed to the assigned judge.³

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, and 21-001, including the procedural and practical challenges to seating a jury in the midst of the COVID-19 pandemic the period of time between April 1, 2021, through June 30, 2021, 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. Notwithstanding the improving conditions in the State of Utah, 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 June 30, 2021 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.

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

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

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 – even with the improving COVID-19 conditions in Utah. Trial requires that jurors, counsel, parties, witnesses, court personnel, and judges all be present in the courtroom in relatively close proximity. Utilizing the [Court's Petit Jury Trial Plan](#), the Court now concludes it is possible to safely host only one jury trial at a time in space available in the courthouse. Empaneling and hosting more than one jury at a time, conducting more than one trial at a time, 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 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.

- 3. 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.

- 4. Grand Jury:** Consistent with Phase II of the Court's plan for resuming operations, normal Grand Jury proceedings in the District may resume April 1, 2021, with the same safety protocols the United States Attorney's Office and the Court have utilized in recent months. Subject to revision at some point in the future, the United States Attorney's Office should continue to coordinate Grand Jury proceedings with Chief Magistrate Judge Dustin Pead (and the Court's Jury Coordinator) to allow an opportunity to address any changing conditions related to the COVID-19 pandemic or space utilization conflicts that may periodically arise with the limited resumption of criminal jury trials. Notwithstanding that normal Grand Jury proceedings will now resume, the Court recognizes the significant backlog of Grand Jury matters caused by the limited access to Grand Jury for over a year since the pandemic caused the Court to suspend proceedings. The Court also recognizes some prospective delay scheduling additional sessions with the sitting Grand Juries to resume work and begin simultaneously working through the backlog and current matters. As a result of these unavoidable delays, the 30-day time period for filing an indictment is tolled as to each defendant through June 30, 2021. 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 April 1, 2021, and June 30, 2021, 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 April 2021 to utdecf_bennett@utd.uscourts.gov for Magistrate Judge Bennett;
 - b. For May 2021 to utdecf_romero@utd.uscourts.gov for Magistrate Judge Romero;
 - c. For June 2021 to utdecf_oberg@utd.uscourts.gov for Magistrate Judge Oberg; and
 - d. 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.

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 moving to Phase II of the Court's plan for resuming operations, in-person hearings in criminal cases may resume as ordered by the presiding judge in each case. The default will continue to be that critical 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, and 20-033 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 II in the discretion of the presiding judge in each case. Judges may set 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 June 30, 2021. Except as specified above, appearances in any criminal hearings ordered by summons are **CONTINUED** through June 30, 2021. 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 April 1, 2021 and June 30, 2021 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.
9. **Reentry and Specialty Courts:** In-court reentry (specialty court) hearings and activities are **SUSPENDED** through June 30, 2021. 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 Phase II of the Court's phased reopening plan, in-person civil hearings and bench trials are now available in the discretion of the presiding judge in each case. Judges may set 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.

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 April 1, 2021, and June 30, 2021, 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 hearings described above, and the like. The St. George Courthouse remains closed, but is proceeding with mission-critical functions through electronic and remote means and may open when the state court determines.

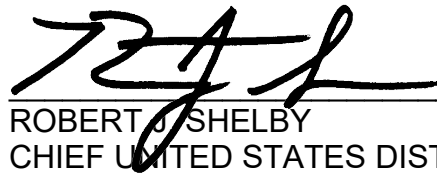
Those coming to the federal courthouse in Salt Lake City must comply with all governmental guidelines, including the use of personal protection such as masks and physical distancing.

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 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 16th day of March, 2021.

BY THE COURT:



ROBERT J. SHELBY
CHIEF UNITED STATES DISTRICT JUDGE