

**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

APR 23 2021

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

In re: JAMES CHRISTOPHER CASTLE;  
REGINALD LAMONT THOMAS.

JAMES CHRISTOPHER CASTLE;  
REGINALD LAMONT THOMAS,

Petitioners,

v.

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF  
CALIFORNIA, SACRAMENTO,

Respondent.

No. 21-70683

D.C. Nos.

2:15-cr-00190-MCE-2

2:20-cr-00012-MCE

Eastern District of California,  
Sacramento

**ORDER**

Before: CLIFTON, MILLER, and BRESS, Circuit Judges.

Petitioners have not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. U.S. Dist. Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is denied.

Petitioners' motion to proceed in forma pauperis (Docket Entry No. 3) is denied as moot.

No further filings will be accepted in this closed case.

**DENIED.**

APPENDIX 'A'

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
501 I STREET, SUITE 15-220  
SACRAMENTO, CA 95814

Chambers of  
KIMBERLY J. MUELLER  
Chief United States District Judge

(916) 930-4260

*Via e-mail*

April 8, 2020

Chief Judge Sidney R. Thomas  
Judicial Council of the Ninth Circuit  
c/o Libby A. Smith, Circuit Executive  
United States Courts for the Ninth Circuit  
James R. Browning United States Courthouse  
95 Seventh Street  
San Francisco, California 94103

RE: Eastern District of California's Request for Suspension of Speedy Trial Act Deadlines Given Judicial Emergency Due to Coronavirus Disease-2019 (COVID-19) Pandemic (18 U.S.C. § 3174)

Dear Chief Judge Thomas:

✓ I write on behalf of the Eastern District of California to request that the Judicial Council of the Ninth Circuit grant a suspension of the time limits provided by the Speedy Trial Act, 18 U.S.C. § 3161(c), for a period of time not to exceed one year, as allowed by 18 U.S.C. § 3174(b).<sup>1</sup> This letter serves as my certification that the Eastern District of California is unable to comply with the time limits set forth in section 3161(c) due to our longstanding emergency circumstances reflected in the status of our court calendars and the limited capabilities of our district with our insufficient number of district judges, despite our efficient use of existing resources. The COVID-19 pandemic has exacerbated our pre-existing emergency such that there simply are no other options for alleviating our calendar congestion, despite the many steps we have been taking to manage the current crisis since its onset.

APPENDIX 'B' - 18pgs

<sup>1</sup> This is a disingenuous statement as Mueller does not express the full intent and scope of §3174 which says in full, "for a period of time not to exceed one year for the trial of cases for which indictments or informations are filed during such one-year period." Therefore, attempting to give the impression that the declaration applies to all matters which is not true.

Chief Judge Sidney R. Thomas  
April 8, 2020  
Page Two

Because I know you and the Judicial Council are keenly aware of the circumstances created by the COVID-19 pandemic and the responses of governmental and public health organizations, I refrain from a review of relevant prior events. As of today, however, it is clear that the pandemic is currently advancing in the 34 counties making up the Eastern District of California. In Sacramento County alone, the County Public Health Officer reports 580 confirmed cases and 22 deaths so far; yesterday he extended Sacramento's shelter-in-place order to May 1, 2020, with the possibility of further extensions, and further tightened restrictions to severely limit activities outside residential homes. Fresno County has 156 cases with 3 deaths and also has a shelter-in-place order in effect. Kern County has a total of 309 cases and 2 deaths, and has declared a local health emergency based on COVID-19. Earlier today, we have learned two federal detainees housed in the Kern County Sheriff's Lerdo Detention Facilities have tested positive for the virus. Given the rapid progress of the disease within our district in just the last week, and the best public health information available to us, we expect that our numbers will continue to rise throughout this month, with a plateau beginning on or about May 1, representing a best-case scenario.

#### Crisis Management: General Orders and Other Initiatives

Along with other districts throughout the Ninth Circuit, the Eastern District of California took steps beginning in mid-March in an effort to respond to public health advisories and get ahead of the curve. Specifically, we have taken the following formal actions, which we have reported on our court's web page, [www.caed.uscourts.gov](http://www.caed.uscourts.gov), in an effort to keep the public apprised:

1. On March 12, 2020, in my capacity as Chief Judge, I issued General Order 610, placing restrictions on certain visitors to our courthouses depending on their travel history, health condition or exposure to persons who had traveled to countries experiencing coronavirus outbreaks. The order, which has since been superseded by General Order 612, was intended to protect the safety of courthouse staff and visitors, in light of the coronavirus pandemic and the best available public health information available at that time.

*onocket*

2. On March 17, 2020, I issued General Order 611, placing limitations on court proceedings by suspending civil and criminal jury trials through May 1, 2020, and providing judges with the flexibility to hold hearings to the extent possible by telephone and video conference. In this order I made a general finding that time under the Speedy Trial Act was excluded under 18 U.S.C. § 3161(h)(7)(A) to May 1, 2020, given the circumstances created by the pandemic.<sup>1</sup> I issued this order after receiving a request from our Federal Defender that our court immediately suspend in-person court appearances in criminal cases until May 1, 2020. I made clear that grand juries were not suspended, but would be convened at the discretion of the U.S Attorney.
3. On March 18, 2020, in light of the quickly evolving public health landscape, I issued General Order 612 closing all federal courthouses in the Eastern District of California to the public through May 1, 2020. Persons having official court business could still enter a courthouse with a judge's approval. As relevant here, this order provided that criminal matters remained on calendar unless continued by agreement or by a judge with a Speedy Trial Act exclusion of time; to the extent possible under the law those matters maintained on calendar would be heard by telephone or video conference. On March 20, 2020, I provided an interpretation of General Order 612, defining "persons having official court business" and clarifying methods for members of the media to gain access to court proceedings.
4. On March 25, 2020, I joined with all members of our Magistrate Judge bench to issue General Order 613, providing temporary procedures for providing pretrial services reports by email to assigned counsel appearing at a criminal proceeding telephonically or by video.

---

<sup>1</sup> While this exclusion serves as a gap-filler covering the period during which we were transitioning to teleworking and virtual court proceedings, individual judges continue to make particularized findings to support exclusions of time in the cases over which they preside.

Chief Judge Sidney R. Thomas  
April 8, 2020  
Page Four

5. On March 30, 2020, following enactment of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), I issued General Order 614 making the findings required by that Act and authorizing the use of videoconferencing, or teleconferencing if videoconferencing is not reasonably available, for the events specified in section 15002(b) of the Act.
6. On April 6, 2020, after several hearings in which we provided audio access to members of the public, we adopted a protocol for public access and posted detailed instructions on our webpage.
7. Regarding grand jury proceedings, I have remained in close consultation with our United States Attorney’s Office and have continued to leave any summoning of the grand jury to that office’s sound discretion. Our court has signaled we would allow proceedings, if required in Sacramento, to be held in our large ceremonial courtroom in the Robert T. Matsui Courthouse to promote physical distancing, while at the same time expressing our concerns about the ability for proceedings to go forward without jeopardizing public health and safety, including the health and safety of grand jurors, witnesses, counsel and court reporters. To date our court has not needed to consider overriding any decision of the United States Attorney with respect to grand juries.

Copies of our General Orders are attached, for ease of reference.

Behind the scenes, our Clerk of Court and I have continually monitored what other courts are doing, participated in the helpful Circuitwide and nationwide telephone conferences set up to allow information sharing, monitored the messages and orders issuing from the federal government, State of California and multiple County Health Offices, and stayed in touch on a regular basis with our bench, chambers and Clerk’s Office staff, as well as our Chief Probation Officer, Chief Pretrial Services Officer, U.S. Marshal and Chief Bankruptcy Judge. We have responded to innumerable email messages from the U.S. Attorney and Federal Defender and other stakeholders as we facilitate efforts to maintain consensus

— It all sounds good – but all about the money and the continued ‘inflow’ by but to Attorney and courthouses continue to get paid at the expense of those caught up in the system and denied ~~their~~ liberty and STA rights – both USCS and Constitutional. *B-H* <sup>in the system</sup>

Chief Judge Sidney R. Thomas  
April 8, 2020  
Page Five

regarding the design and functionality of our virtual court setup, which has taken longer to deploy than anticipated given the decidedly mixed capabilities at the many local jails in which our federal pretrial detainees are housed. We have piloted telephonic court hearings and videoconference proceedings in which all participants appear remotely, and have recruited other members of the bench and the Clerk of Court's staff to expand the bandwidth of our crisis management team. The Clerk's Office IT staff in particular has worked nonstop to transition us not only to virtual court proceedings but to full teleworking for all staff, helping to address hundreds of infrastructural needs for equipment and the achievement of remote network access. Our IT staff also has helped solve many new problems, such as finding an electronic court reporting (ECRO) solution to ensure a good record for remote court hearings when a live court reporter is not available to telephone in.

Planning Group Consultation; Reasons for Request

As required by 18 U.S.C. § 3174(a), I have consulted with those persons identified by the statute as members of a court's Speedy Trial Planning Group to seek their recommendation. All recommend that our court submit this application requesting suspension of the Speedy Trial Act's time limits. One member observed that ideally the suspension could be revoked, or no longer relied upon, if and when the court is able to return to normal functioning. Having considered the entirety of our court's circumstances, in consultation with Planning Group members and our Clerk of Court, I have concluded the suspension is necessary given that no other remedy for our current greater congestion is reasonably available. The primary reasons for my conclusion are summarized below.

The Eastern District of California is operating with severely limited capabilities during the COVID-19 pandemic. Almost all of our judges and members of court staff are working remotely, dispersed across an extremely large geographic area. As noted all of our courthouses are closed to the public. We are holding only those proceedings that are essential in criminal cases, and only very few time sensitive civil hearings between now and May 1, 2020, a date that appears likely to be extended. While we have functioning telephone and videoconferencing capabilities, conducting our trial court hearings in this way can be very challenging

under the best of circumstances, and does not begin to approximate the quality of proceeding for which we regularly strive. In terms of submitted matters that we can resolve on the papers, while we all are set up now to telework and are getting work done, it is difficult to attain the same level of productivity as we do in chambers, given some remaining technological challenges including intermittent internet connections, many employees' ergonomically inadequate home office setups, and the understandable distractions that can arise in a home where others are sheltering in place as well. As we are adjusting to work in new and imperfect physical circumstances, we are beginning to see a rising stream of new motions and petitions seeking immediate release from confinement in light of COVID-19, for which no established law guides the resolution and there often are no easy answers, particularly given the equitable considerations implicated. These new matters require attention now, with submitted motions set aside in the meantime.

Even once we can return to our courthouses, as we all hope to do as soon as we can, we expect then to need time to regroup. We anticipate a significant backlog of trials, given that at least 52 trials districtwide have been continued since mid-March. The first trials will likely not be held until at least two weeks after our doors open again, given that jury administrators will need time to identify jury pools and summon them in. Realistically, our preexisting backlog of motions and old cases will have grown given the wave of new motions occasioned by the pandemic, making it unlikely we will have been able to use enough of our time away from the courthouse to whittle the backlog down in any meaningful way.

No Other Reasonable Remedy Available Against Backdrop of Pre-existing Emergency

As you know, our district has enjoyed the services of visiting judges on occasion over the last several years. While we appreciate the work these judges have performed for us, it has been clear for some time that there is no visiting judge program that can address our longstanding need for judicial resources; what we need is resident judges that own full caseloads. Under the current circumstances, with the accompanying severe restrictions on travel and movement in the community, obtaining visiting resident judges simply is not a reasonable possibility in any respect. Even if a cadre of visiting judges were available to assist us by

Chief Judge Sidney R. Thomas  
April 8, 2020  
Page Seven

working remotely, our existing staff and technological resources are currently overtaxed to the extent we simply cannot support a visiting judge program at this time.

Even apart from the emergency created by the COVID-19 pandemic, our court has been operating with increasingly limited resources for many years now. All of the crisis management tasks summarized above are in addition to the traditional work of our court, which already is burdened by heavy criminal and civil caseloads with too few judges. Our preexisting dearth of judicial resources is heightened by recent transitions: the taking of active senior status by one judge, District Judge Morrison C. England, and inactive senior status by another, District Judge Garland E. Burrell, at the end of last year. My predecessor, Chief District Judge Lawrence J. O'Neill, also has departed the court, taking inactive senior status at the beginning of February 2020. The two judicial openings created in our Fresno Division as a result of these career transitions continue to remain vacant, with no nominations pending. As the Judicial Council well knows, the Eastern District of California's plight is nothing new. The population of our district is approaching 8.5 million and yet we have only 6 active district judgeships, including our two vacancies. Currently, there is only one active District Judge assigned to our Fresno Division and that judge, District Judge Dale A. Drozd, is the only judge hearing criminal cases. Because of the many pleas and sentencing he must handle, Judge Drozd currently holds two full criminal calendars a week, with trials conducted on the other three days of the week, eliminating his ability to hold civil law and motion calendars. Additionally, Judge Drozd alone reviews all Title III wiretap applications and related proceedings, a not insignificant task in light of the high number of complex, gang-related investigations and prosecutions arising in our Fresno Division.

*just did  
trial hearing  
sa  
register  
judge -  
who app'd  
im as  
District Judge?*

Even if our two vacancies are filled at some point during this election year, and the particularly severe congestion in our Fresno Division somewhat relieved, we still will qualify for five additional district judgeships, as the Judicial Conference has once again recommended in its most recent report to Congress. A more complete picture of our District's pressing needs, even before anyone had any sense of the disruptions COVID-19 would cause, is painted in our 2021 Biennial Survey of Article III Judgeships Response, attached.

*2012  
book one  
s. Chief Judge  
they no  
s.t. and  
now us  
is to  
make better.*

\* what about previous survey? when?  
2019? (every two yrs)  
Reviews this

Chief Judge Sidney R. Thomas  
April 8, 2020  
Page Eight

Conclusion

For all of these reasons, based on the impact of the COVID-19 pandemic on the pre-existing paltry judicial resources of the Eastern District of California, our court respectfully requests the Judicial Council extend the time limits under 18 U.S.C. § 3161(c) for a period of time not to exceed one year.

Thank you for your consideration.

Respectfully yours,

  
\_\_\_\_\_  
CHIEF UNITED STATES DISTRICT JUDGE

Attachments (General Orders; 2021 Biennial Survey of Article III Judgeships Response)

cc: Keith Holland, Clerk of Court, Eastern District of California

B-8

IN RE APPROVAL OF THE JUDICIAL EMERGENCY DECLARED IN THE EASTERN DISTRICT OF  
CALIFORNIA  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT  
956 F.3d 1175; 2020 U.S. App. LEXIS 14079

[NO NUMBER IN ORIGINAL]  
April 16, 2020, Declded

Judges: (2020 U.S. App. LEXIS 1) Before: THOMAS, Chief Circuit Judge, BYBEE, IKUTA, N. R. SMITH, MURGUIA, and CHRISTEN, Circuit Judges, HAMILTON, MARTINEZ, PHILLIPS, and SEABRIGHT, Chief District Judges, and LEW, Senior District Judge.

Opinion

Opinion by: Sidney R. Thomas

Opinion

(956 F.3d 1177) ORDER

On March 17, 2020, Chief District Judge Kimberly J. Mueller declared a judicial emergency in the Eastern District of California pursuant to 18 U.S.C. § 3174(e). Finding no reasonably available remedy, the Judicial Council agreed to continue the judicial emergency for an additional one-year period and suspend the time limits of 18 U.S.C. § 3161(c). The continued judicial emergency will end on May 2, 2021.

The attached *Report of the Judicial Council of the Ninth Circuit Regarding a Judicial Emergency in the Eastern District of California* constitutes the findings of fact and conclusions of law of the Judicial Council justifying a declaration of judicial emergency pursuant to 18 U.S.C. § 3174. This report was submitted to the Director of the Administrative Office of the U.S. Courts. See 18 U.S.C. § 3174(d).

Adopted: April 16, 2020

/s/ Sidney R. Thomas

Hon. Sidney R. Thomas, Chair

APPENDIX C

#### § 3174. Judicial emergency and implementation

(a) In the event that any district court is unable to comply with the time limits set forth in section 3161(c) [18 USCS § 3161(c)] due to the status of its court calendars, the chief judge, where the existing resources are being efficiently utilized, may, after seeking the recommendations of the planning group, apply to the judicial council of the circuit for a suspension of such time limits as provided in subsection (b). The judicial council of the circuit shall evaluate the capabilities of the district, the availability of visiting judges from within and without the circuit, and make any recommendations it deems appropriate to alleviate calendar congestion resulting from the lack of resources.

(b) If the judicial council of the circuit finds that no remedy for such congestion is reasonably available, such council may, upon application by the chief judge of a district, grant a suspension of the time limits in section 3161(c) [18 USCS § 3161(c)] in such district for a period of time not to exceed one year for the trial of cases for which indictments or informations are filed during such one-year period. During such period of suspension, the time limits from arrest to indictment, set forth in section 3161(b) [18 USCS § 3161(b)], shall not be reduced, nor shall the sanctions set forth in section 3162 [18 USCS § 3162] be suspended; but such time limits from indictment to trial shall not be increased to exceed one hundred and eighty days. The time limits for the trial of cases of detained persons who are being detained solely because they are awaiting trial shall not be affected by the provisions of this section.

(c) (1) If, prior to July 1, 1980, the chief judge of any district concludes, with the concurrence of the planning group convened in the district, that the district is prepared to implement the provisions of section 3162 [18 USCS § 3162] in their entirety, he may apply to the judicial council of the circuit in which the district is located to implement such provisions. Such application shall show the degree of compliance in the district with the time limits set forth in subsections (b) and (c) of section 3161 [18 USCS § 3161] during the twelve-calendar-month period preceding the date of such application and shall contain a proposed order and schedule for such period preceding the date on which the provisions of section 3162 [18 USCS § 3162] are to become effective in the district, the effect such implementation will have upon such district's practices and procedures, and provision for adequate notice to all interested parties.

(2) After review of any such application, the judicial council of the circuit shall enter an order implementing the provisions of section 3162 [18 USCS § 3162] in their entirety in the district making application, or shall return such application to the chief judge of such district, together with an explanation setting forth such council's reasons for refusing to enter such order.

(d) (1) The approval of any application made pursuant to subsection (a) or (c) by a judicial council of a circuit shall be reported within ten days to the Director of the Administrative Office of the United States Courts, together with a copy of the application, a written report setting forth in sufficient detail the reasons for granting such application, and, in the case of an application made pursuant to subsection (a), a proposal for alleviating congestion in the district.

(2) The Director of the Administrative Office of the United States Courts shall not later than ten days after receipt transmit such report to the Congress and to the Judicial Conference of the United States. The judicial council of the circuit shall not grant a suspension to any district within six months following the expiration of a prior suspension without the consent of the Congress by Act of Congress. The limitation on granting a suspension made by this paragraph shall not apply with respect to any judicial district in which the prior suspension is in effect on the date of the enactment of the Speedy Trial Act Amendments Act of 1979 [enacted Aug. 2, 1979].

(e) If the chief judge of the district court concludes that the need for suspension of time limits in such district under this section is of great urgency, he may order the limits suspended for a period not to exceed thirty days. Within ten days of entry of such order, the chief judge shall apply to the judicial council of the circuit for a suspension pursuant to subsection (a).

#### HISTORY:

Added Jan. 3, 1975, P. L. 93-619, Title I, § 101, 88 Stat. 2085; Aug. 2, 1979, P. L. 96-43, § 10, 93 Stat.

331

APPENDIX D

### § 3161. Time limits and exclusions

(a) In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set the case for trial on a day certain, or list it for trial on a weekly or other short-term trial calendar at a place within the judicial district, so as to assure a speedy trial.

(b) Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges. If an individual has been charged with a felony in a district in which no grand jury has been in session during such thirty-day period, the period of time for filing of the indictment shall be extended an additional thirty days.

(c) (1) In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs. If a defendant consents in writing to be tried before a magistrate [United States magistrate judge] on a complaint, the trial shall commence within seventy days from the date of such consent.

(2) Unless the defendant consents in writing to the contrary, the trial shall not commence less than thirty days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se.

(d) (1) If any indictment or information is dismissed upon motion of the defendant, or any charge contained in a complaint filed against an individual is dismissed or otherwise dropped, and thereafter a complaint is filed against such defendant or individual charging him with the same offense or an offense based on the same conduct or arising from the same criminal episode, or an information or indictment is filed charging such defendant with the same offense or an offense based on the same conduct or arising from the same criminal episode, the provisions of subsections (b) and (c) of this section shall be applicable with respect to such subsequent complaint, indictment, or information, as the case may be.

(2) If the defendant is to be tried upon an indictment or information dismissed by a trial court and reinstated following an appeal, the trial shall commence within seventy days from the date the action occasioning the trial becomes final, except that the court retrying the case may extend the period for trial not to exceed one hundred and eighty days from the date the action occasioning the trial becomes final if the unavailability of witnesses or other factors resulting from the passage of time shall make trial within seventy days impractical. The periods of delay enumerated in section 3161(h) [18 USCS § 3161(h)] are excluded in computing the time limitations specified in this section. The sanctions of section 3162 [18 USCS § 3162] apply this subsection.

(e) If the defendant is to be tried again following a declaration by the trial judge of a mistrial or following an order of such judge for a new trial, the trial shall commence within seventy days from the date the action occasioning the retrial becomes final. If the defendant is to be tried again following an appeal or a collateral attack, the trial shall commence within seventy days from the date the action occasioning the retrial becomes final, except that the court retrying the case may extend the period for retrial not to exceed one hundred and eighty days from the date the action occasioning the retrial becomes final if unavailability of witnesses or other factors resulting from passage of time shall make trial within seventy days impractical. The periods of delay enumerated in section 3161(h) [18 USCS § 3161(h)] are excluded in computing the time limitations specified in this section. The sanctions of

section 3162 [18 USCS § 3162] apply to this subsection.

(f) Notwithstanding the provisions of subsection (b) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(a) of this chapter [18 USCS § 3163] [,] the time limit imposed with respect to the period between arrest and indictment by subsection (b) of this section shall be sixty days, for the second such twelve-month period such time limit shall be forty-five days and for the third such period such time limit shall be thirty-five days.

(g) Notwithstanding the provisions of subsection (c) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(b) of this chapter [18 USCS § 3163(b)], the time limit with respect to the period between arraignment and trial imposed by subsection (c) of this section shall be one hundred and eighty days, for the second such twelve-month period such time limit shall be one hundred and twenty days, and for the third such period such time limit with respect to the period between arraignment and trial shall be eighty days.

(h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to—

(A) delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;

(B) delay resulting from trial with respect to other charges against the defendant;

(C) delay resulting from any interlocutory appeal;

(D) delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion;

(E) delay resulting from any proceeding relating to the transfer of a case or the removal of any defendant from another district under the Federal Rules of Criminal Procedure;

(F) delay resulting from transportation of any defendant from another district, or to and from places of examination or hospitalization, except that any time consumed in excess of ten days from the date an order of removal or an order directing such transportation, and the defendant's arrival at the destination shall be presumed to be unreasonable;

(G) delay resulting from consideration by the court of a proposed plea agreement to be entered into by the defendant and the attorney for the Government; and

(H) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court.

(2) Any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

(3) (A) Any period of delay resulting from the absence or unavailability of the defendant or an essential witness.

(B) For purposes of subparagraph (A) of this paragraph, a defendant or an essential witness shall be considered absent when his whereabouts are unknown and, in addition, he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence. For purposes of

APPENDIX - E

## 5<sup>th</sup> Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## APPENDIX F

## 6<sup>th</sup> Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

## APPENDIX G

EXHIBIT 6

(4pgs)

FILED

March 17, 2020

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

IN RE: ) GENERAL ORDER NO. 611  
 )  
9 FINDINGS AND ORDER )  
10 AS TO COURT PROCEEDINGS )  
11 IN LIGHT OF COVID-19, )  
12 ALSO KNOWN AS CORONAVIRUS. )  
13 \_\_\_\_\_ )

14 WHEREAS, the President of the United States of America has declared a national  
15 emergency in response to COVID-19, also known as "Coronavirus," and encouraged limitations  
16 on gatherings of more than 10 persons;

17 WHEREAS, the Governor of the State of California has declared a public health  
18 emergency throughout the State in response to the spread of COVID-19, and strongly encouraged  
19 certain segments of the population to remain at home at the current time;

20 WHEREAS, the Centers for Disease Control and Prevention, California Department of  
21 Public Health and other public health authorities have advised the taking of precautions, including  
22 limiting gathering sizes and practice social distancing, to reduce the possibility of exposure to the  
23 virus and slow the spread of the disease;

24 WHEREAS local health officials in the Eastern District of California in particular have  
25 declared local health emergencies in light of the presence of persons infected with the coronavirus  
26 in their jurisdictions, including in Sacramento and Fresno Counties where the court's two main  
27 courthouses are located, and the outbreak of COVID-19 in the Eastern District has reached the  
28 point where court operations are affected in that many persons at higher risk of serious or fatal

1      illness are involved in court proceedings as attorneys, parties or court staff or being asked to serve  
2      the court as jurors;

3            WHEREAS slowing the transmission of the virus in the community is an important part of  
4      mitigating the impact of the disease on vulnerable individuals and reducing the immediate burden  
5      on the health care system and the community at large, including members of the federal bar and  
6      their clients as well as pro se litigants;

7            WHEREAS the Eastern District court maintains a robust capacity for conducting business  
8      remotely, and essential court operations can and will continue unimpeded, but not all of the  
9      court's work can be completed at a distance; and

10           WHEREAS the need for in-court hearings and trials must be balanced against the risk  
11     stemming from the associated interpersonal contact; jury proceedings are inadvisable in the  
12     current environment to protect public health and ensure that when juries are seated they represent  
13     a cross-section of the community and constitute the required jury of one's peers to which criminal  
14     defendants in particular are entitled, *see Thiel v. S. Pac. Co.*, 328 U.S. 217, 220 (1946) ("The  
15     American tradition of trial by jury, considered in connection with either criminal or civil  
16     proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the  
17     community."); *Taylor v. Louisiana*, 419 U.S. 522, 537 (1975) ("[T]he Sixth Amendment affords  
18     the defendant in a criminal trial the opportunity to have the jury drawn from venues  
19     representative of the community[.]"); and even if a jury that meets these requirements could be  
20     seated at this point notwithstanding public officials' urging certain populations to remain home,  
21     there is no assurance the jury's deliberations would be unaffected by continuing health and safety  
22     concerns and evolving public health mandates and protocols.

*Jury  
Excluded*

23           Accordingly, with the concurrence of a majority of the District Judges of the court, in  
24     order to protect public health, reduce the size of public gatherings and unnecessary travel, and

25     ////

26     ////

27     ////

28     ////

1 ensure the ability to deliver fair and impartial justice to all those who come before the court, the  
2 court orders as follows:

3 1. The United States Courthouses in Sacramento, Modesto (with hearings held in  
4 Sacramento during ongoing remodeling), Fresno, Bakersfield, Yosemite and Redding  
5 will remain open for business, subject to the following limitations.

6 2. Effective immediately, the court will not call in jurors for service in civil or criminal  
7 jury trials until May 1, 2020. All civil and criminal jury trials in the Eastern District of California  
8 scheduled to begin during this time period are continued pending further order of the court. The  
9 court may issue other orders concerning future continuances as necessary and appropriate.

10 3. All courtroom proceedings and filing deadlines in a case will remain in place unless  
11 otherwise ordered by the Judge presiding over that case.

12 4. The time period of any continuance entered in a criminal case as a result of this order  
13 shall be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), as the court finds based  
14 on the recitals above that the ends of justice served by taking that action outweigh the interests of  
15 the parties and the public in a speedy trial. Absent further order of the court or any individual  
16 judge, the period of exclusion shall be from March 17, 2020, to May 1, 2020. The court may  
17 extend the period of exclusion in a subsequent order as evolving circumstances warrant.

18 5. Individual judges may continue to hold hearings, conferences and bench trials in the  
19 exercise of their discretion, including by teleconference or videoconference, consistent with this  
20 order.

21 6. Criminal matters before Magistrate Judges, such as initial appearances, arraignments,  
22 detention hearings and the issuance of search warrants, shall continue to take place in the ordinary  
23 course, subject to the parties' established ability to seek continuances or, as allowed by law, the  
24 holding of telephonic or videoconference appearances.

25 7. The Bankruptcy Court, Clerk's Office, Probation Office, Pretrial Services Office and all  
26 other court services shall remain open pending further order of the court, although the method of  
27 providing services may be modified to account for COVID-19 and attendant public health  
28 advisories. ~~omission~~ I fact that majority of public servants in these offices  
will be required to "work from home" as well as the courthouse was closed  
to the public essentially barring the public from the ability to access or  
contact these offices.

- web ok to convert 16-23 people in a shared space but not able to go to a restaurant.

1       8. This order does not affect grand juries, which are convened by the U.S. Attorney and  
2 shall continue to meet as scheduled by his office.

3           9. This order may be modified, expanded or superseded at any time to account for the  
4 developing nature of the COVID-19 public health emergency.

5 IT IS SO ORDERED.

6 DATED: March 16, 2020.

W. A. Muller  
CHIEF UNITED STATES DISTRICT JUDGE

# EXHIBIT 3

(3pgs)

Issued

one day after  
9th Circuit  
Emergency Judicial  
Order 20-1475  
Apr 14, 2020

FILED

April 17, 2020

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

## UNITED STATES DISTRICT COURT

## EASTERN DISTRICT OF CALIFORNIA

IN RE: )  
 )  
EXTENDING TEMPORARY )  
RESTRICTIONS ON COURTHOUSE )  
ACCESS AND IN COURT HEARINGS )  
 )

GENERAL ORDER NO. 617

WHEREAS, the court previously has issued General Orders addressing the national, regional and local public health emergency posed by the coronavirus (COVID-19) outbreak by continuing all trials and closing its courthouses to the public until May 1, 2020;

WHEREAS, since the issuance of the court's prior orders circumstances related to the outbreak have continued to evolve, with state and local public agencies instituting still further enhanced measures to manage the spread of the virus and limit the potential for the illness and death it can cause;

WHEREAS, this week the President of the United States has announced federal guidelines for reopening the economy, while at the same time deferring to governors to determine when states will resume normal operations;

WHEREAS, this week the Governor of California has outlined six steps for reopening public and private sector operations and lifting restrictions in place throughout the state, without providing a definite date by which restrictions will be lifted;

AND WHEREAS, the Judges of the United States District Court for the Eastern District of California, in consultation with the Clerk of Court, continue to closely monitor developments and balance the various interests implicated by the COVID-19 outbreak and the court's response

Appendix I

to the outbreak, including: the health of jurors, witnesses, parties, attorneys, the public whom it is our privilege to serve, Clerk's Office and all court staff, Probation and Pretrial Services staff, chambers staff and judges; the constitutional rights of criminal defendants and other parties; and the public's interest in, and the court's duty to ensure, the effective and expeditious administration of justice;

NOW THEREFORE, in light of the best information available to the Judges of the Eastern District of California at this time, effective immediately through June 1, 2020, I hereby issue the following Order on behalf of the Court to supplement the prior orders issued on March 12, 17, 18 and 30, 2020, with the findings relied on in those orders incorporated in full herein:

1. In light of the current coronavirus (COVID-19) outbreak, all courthouses of the United States District Court for the Eastern District of California shall remain closed to the public. Only persons having official court business as authorized by a Judge of the District Court or the Bankruptcy Court, or a healthy building tenant having official business on behalf of a tenant agency, may enter courthouse property. This order applies to the following divisional locations:
  - (1) The Robert T. Matsui United States Courthouse, 501 I Street, Sacramento;
  - (2) The Robert E. Coyle United States Courthouse, 2500 Tulare Street, Fresno;
  - (3) The Redding Federal Courthouse, 2986 Bechelli Lane, Redding;
  - (4) The Bakersfield Federal Courthouse, 510 19th Street, Bakersfield;
  - (5) The Yosemite Federal Courthouse, 9004 Castle Cliff Court, Yosemite; and
  - (6) The Modesto U.S. Bankruptcy Court, 1200 I Street, Second Floor, Modesto.
2. The court will not call in jurors for service in civil or criminal jury trials until June 15, 2020, at the earliest, if courthouses reopen to the public on June 1, 2020. All civil and criminal jury trials in the Eastern District of California scheduled to begin before June 15, 2020 are further continued pending further order of the court.
3. All of the court's civil matters will be decided on the papers, or if the assigned Judge believes a hearing is necessary, the hearing will be by telephone or videoconference. This applies

to all matters including motion hearings, case management conferences, pretrial conferences and settlement conferences.

4. In civil matters and bankruptcy matters in which parties represent themselves (pro se litigants), those parties continue to be strongly encouraged to file documents by mail. For those unable to file by mail the court is providing drop boxes for filing inside the entrances to the Sacramento, Fresno and Modesto courthouses, that otherwise previously have accepted hand-delivered pro se filings in the Clerk's Offices for those courts.

5. In the court's criminal matters, all initial appearances, arraignments and other essential proceedings will continue to be held before the duty Magistrate Judges, unless the parties agree to continue them; to the full extent possible matters that are maintained on calendar shall be conducted by telephone or videoconference as provided by General Order 614.

6. In criminal cases before the District Judges, the assigned District Judge may continue matters to a date after June 1, 2020, excluding time under the Speedy Trial Act with reference to the court's prior General Order 611 issued on March 17, 2020, the court's subsequent declaration of a judicial emergency based on 18 U.S.C. § 3174, and the Ninth Circuit Judicial Council's Order of April 16, 2020 continuing this court's judicial emergency for an additional one-year period and suspending the time limits of 18 U.S.C. § 3161(c) until May 2, 2021, with additional findings to support the exclusion in the Judge's discretion; if any criminal matters are maintained on calendar, to the full extent possible they shall be conducted by telephone or videoconference, also as provided by General Order 614.

7. Any Judge may order case-by-case exceptions to any of the above numbered provisions for non-jury court matters at the discretion of that Judge or upon the request of counsel, after consultation with counsel.

IT IS SO ORDERED.

DATED: April 17, 2020.

FOR THE COURT:

  
KIMBERLY J. MUELLER  
CHIEF UNITED STATES DISTRICT JUDGE  
EASTERN DISTRICT OF CALIFORNIA

# EXHIBIT 4

(4pgs)

FILED

May 13, 2020

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

IN RE: ) GENERAL ORDER NO. 618  
 )  
 )  
FURTHER EXTENDING TEMPORARY )  
RESTRICTIONS ON COURTHOUSE )  
ACCESS AND IN COURT HEARINGS )  
UNTIL FURTHER NOTICE )  
 )

WHEREAS, the court previously has issued General Orders addressing the national, regional and local public health emergency posed by the coronavirus (COVID-19) outbreak by continuing all trials and closing its courthouses to the public until June 1, 2020;

WHEREAS, since issuance of the court's prior orders, the President of the United States has provided guidelines for reopening public institutions, businesses and the economy generally, accompanied by proposed gating criteria for states or regions to satisfy before proceeding to a phased resumption of services and operations;

WHEREAS, the Governor of California has announced that the statewide stay home order he issued on March 19, 2020 remains in effect until further notice, with modifications as of May 8 and 12 effecting a gradual reopening of lower-risk workplaces, with further reopening subject to compliance with defined readiness criteria;

WHEREAS, many of the 34 counties within the Eastern District of California continue to maintain local public health orders supplementing the State of California's stay home order and requiring measures to manage the spread of the virus and limit the potential for the illness and death it can cause;

Appendix J

AND WHEREAS, the Judges of the United States District Court for the Eastern District of California, in consultation with the Clerk of Court, continue to closely monitor developments and balance the various interests implicated by the COVID-19 outbreak and the court's response to the outbreak, including: the health of jurors, witnesses, parties, attorneys, the public whom it is our privilege to serve, Clerk's Office and all court staff, Probation and Pretrial Services staff, chambers staff and judges; the constitutional rights of criminal defendants and other parties; and the public's interest in, and the court's duty to ensure, the effective and expeditious administration of justice;

NOW THEREFORE, in light of the best information available to the Judges of the Eastern District of California at this time, until further notice, on behalf of the Court, I hereby issue the following Order superseding the prior General Order issued on April 17, 2020:

✓ 1. In light of the ongoing coronavirus (COVID-19) pandemic, all courthouses of the United States District Court for the Eastern District of California shall remain closed to the public. Only persons having official court business as authorized by a Judge of the District Court or the Bankruptcy Court, or a healthy building tenant having official business on behalf of a tenant agency, may enter courthouse property. This order applies to the following divisional locations:

- (1) The Robert T. Matsui United States Courthouse, 501 I Street, Sacramento;
- (2) The Robert E. Coyle United States Courthouse, 2500 Tulare Street, Fresno;
- (3) The Redding Federal Courthouse, 2986 Bechelli Lane, Redding;
- (4) The Bakersfield Federal Courthouse, 510 19th Street, Bakersfield;
- (5) The Yosemite Federal Courthouse, 9004 Castle Cliff Court, Yosemite; and
- (6) The Modesto U.S. Bankruptcy Court, 1200 I Street, Second Floor, Modesto.

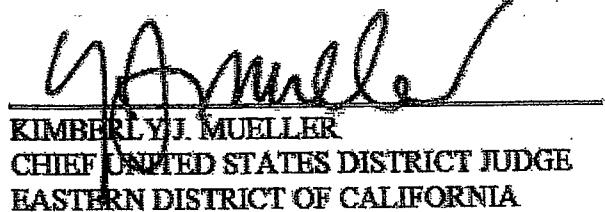
✓ 2. The court will not call in jurors for service in civil or criminal jury trials until further notice.

- ✓ 3. All of the court's civil matters will continue to be decided on the papers, or if the assigned Judge believes a hearing is necessary, the hearing will be by telephone or videoconference. This applies to all matters including motion hearings, case management conferences, pretrial conferences and settlement conferences.
- ✓ 4. In civil matters and bankruptcy matters in which parties represent themselves (pro se litigants), those parties are strongly encouraged to file documents by mail. For those unable to file by mail the court is providing drop boxes for filing inside the entrances to the Sacramento, Fresno and Modesto courthouses, where Clerk's Offices otherwise previously have accepted hand-delivered pro se filings.
- ✓ 5. In the court's criminal matters all initial appearances, arraignments and other essential proceedings will continue to be held before the duty Magistrate Judges, unless the parties agree to continue them; to the full extent possible matters that are maintained on calendar shall be conducted by telephone or video conference as provided by General Order 614, which remains in effect.
- ✓ 6. In criminal cases before the District Judges, the assigned District Judge may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the court's prior General Order 611 issued on March 17, 2020, the court's subsequent declaration of a judicial emergency based on 18 U.S.C. § 3174, and the Ninth Circuit Judicial Council's Order of April 16, 2020 continuing this court's judicial emergency for an additional one-year period and suspending the time limits of 18 U.S.C. § 3161(c) until May 2, 2021, with additional findings to support the exclusion in the Judge's discretion; if any criminal matters are maintained on calendar, to the full extent possible they shall be conducted by telephone or video conference, also as provided by General Order 614.
- ✓ 7. Any Judge may order case-by-case exceptions to any of the above numbered provisions at the discretion of that Judge or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.

IT IS SO ORDERED.

DATED: May 13, 2020.

FOR THE COURT:



KIMBERLY J. MUELLER  
CHIEF UNITED STATES DISTRICT JUDGE  
EASTERN DISTRICT OF CALIFORNIA