

NO. 23 _____

SUPREME COURT OF THE UNITED STATES

BREON POWELL

Petitioner

vs.

SUPERINTENDENT HUNTINGDON, SCI, ET AL.

Respondents

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

Nicholas Casamento, Esquire
4 West Front Street
Media, PA 19063
Phone: (610) 565-5050
Fax: (610) 565-2980
Email: candrlawfirm@gmail.com

I. QUESTIONS PRESENTED

1. Did Circuit Court of Appeals err and thereby abuse its discretion and commit error in denying due process to Appellant Powell when it denied a Certificate of Appealability from the District Court's denial of Petitioner's claims in his Habeas Corpus filing pursuant to 28 U.S.C. 2254 when it found that Petitioner did not use "due diligence" in his pursuit of his habeas claim and thus his filing was untimely pursuant to 28 U.S.C. 2254 when the United States District Court in which Appellant could have filed his habeas petition was shut down to filings due to its own Orders of closure related to the Covid-19 worldwide pandemic?

2. Did the Third Circuit Court's denial of appealability by upholding the District Court's denial of Appellant's habeas petition where the District Court found that equitable tolling did not apply, even where the same District Court, by its own Orders, had shut down its court to filings due to the worldwide pandemic, did that create a "de-facto" alteration of the statute and denial of due process?

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IV. PETITION FOR WRIT OF CERTIORARI

Breon Powell, an inmate currently incarcerated at the Huntingdon SCI, by and through his attorneys, Nicholas J. Casamento Delaware County of Pennsylvania, respectfully petition this Court for a Writ of Certiorari to review the judgement of the United States Court of Appeals for the Third Circuit.

V. OPINIONS BELOW

The 3d Circuit's decision on January 27, 2023, to deny Powell's certificate of appealability Appendix 2. And then said Circuit Court's denial on March 29, 2023, of a petition for rehearing where "a majority of the judges of the circuit in regular service not having voted for rehearing"; Appendix 1.

VI. JURISDICTION

The Third Circuit denied Petition for Rehearing on March 29, 2023. See Appendix 1. This Petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. 1254.

VII. CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V

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VIII. STATEMENT OF THE CASE

Petitioner Breon Powell (Powell) was convicted, following a jury trial, of Criminal Homicide and related offenses, in the case docketed at CP-09-CR-0003591-2012 in the Bucks County Court of Common Pleas. The jury, following a penalty

phase hearing, determined that the sentence would be life without the possibility of parole as opposed to the death penalty.

Following the imposition of that sentence, on December 9, 2013, Powell's trial counsel filed timely post-sentence motions which were denied by the Bucks County Court of Common Pleas (Boylan, J) on or about April 3, 2014. Powell then filed a direct appeal on or about April 22, 2014, and the Trial Court filed its Opinion on or about January 21, 2016.

The direct appeal to the Superior Court of Pennsylvania in this matter was docketed at 1312 EDA 2014. The direct appeal was timely filed and litigated on Powell's behalf by Richard Fink, Esquire, and was denied on or about September 25, 2017. Petition for Allowance of Appeal was timely filed to the Pennsylvania Supreme Court on or about October 24, 2017, docketed at 721 MAL 2017, and was denied on April 3, 2018.

Powell began preparing his pro se Petition for Relief under the Post-Conviction Relief Act ("PCRA") and sent it by the prison mail system, which had recently been overhauled per Pennsylvania's State Prison authority and on or about September 21, 2018, said PCRA petition was marked filed.

Counsel for Powell, Bonnie-Ann Brill Keagy, Esquire, was appointed on or about November 19, 2018. Counsel filed an Amended Petition for Relief under the Post-Conviction Relief Act on or about March 29, 2019. An answer to the Amended Petition was filed by the Commonwealth of Pennsylvania (hereinafter "Appellee") on or about April 15, 2019.

Following that hearing, on April 26, 2019, the Trial Court issued an Order that denied the Amended Post-Conviction Relief Act Petition; a timely appeal to the Superior Court of Pennsylvania followed on May 23, 2019. The Superior Court affirmed the trial court's order on April 29, 2020, to which Powell's appointed counsel filed a timely Petition for Allowance of Appeal to the PA Supreme Court on May 27, 2020, which Petition was denied on September 23, 2020, and remitted on September 25, 2020.

Powell was advised by letter from his PCRA appointed counsel of the denial and informed that his only other recourse was to seek federal relief in a habeas corpus petition. Said counsel also informed that Powell had until September 23, 2021, to file said habeas filing per counsel's understanding of a one-year statute under 28 USC 2254. It should be noted that the state prison and federal courts were on lockdown and shutdown mode during significant periods in 2020.

Powell sought private counsel through his father's inquiries which he was able to secure eventually in the last week of August 2021. Said counsels were not able to directly converse with Powell until September 7, 2021, and then again on September 15, 2021, and did not receive the complete boxes of files until said date. In reviewing the numerous documents and transcripts of a several week trial along with the several state appeals and opinions, it was evident that Powell had diligently pursued his appeal rights throughout the length of this case. And although there was a gap of time between the denial of his underlying plea on April 3, 2018 (plus the 90 day allowance for a certiorari, i.e. to July 3, 2018) and the PCRA filing on September 21,

2018, consistent with the case of Fahy v. Horn, 240 F.3d 239 (3d Cir. 2001), Powell diligently pursued remedies throughout the state courts while then attempting to pursue his federal remedy such that there is no abuse of the habeas system by any long delay particularly given the Federal District Court's shut down Orders closing the court to all paper filings.

Powell filed his habeas corpus petition on September 23, 2021, with the District Court and said matter was transferred to Magistrate Judge Carol Sandra Moore Wells for review. Judge Wells issued her "Report and Recommendation" on March 30, 2022, to which Petitioner filed timely objections. On August 11, 2022, United States District Judge Gerald Austin McHugh "Approved and Adopted" the "Report and Recommendation" and did not issue a Certificate of Appealability necessitating this Application for Certificate of Appealability.

IX. REASONS FOR GRANTING WRIT

I. EQUITABLE TOLLING

The Third Circuit found that Appellant had filed 80 days beyond the AEDPA statutory deadline and in its January 27, 2023, ORDER refused to find "equitable tolling" which Appellant argues is an error of the interpretation of the Federal District Court's "Standing Orders". Third Circuit has stated that "...Powell has not shown how the District Court's COVID-19 standing order prevented him from filing a timely petition after that order expired. See Ross v. Varano, 712 F.3d 784, 803 (3d Cir. 2013)". Said Court is failing to "exclude" the time period that the District Court's COVID-19 standing orders explicitly says should be "excluded" from such calculation. Every case cited by the Third Circuit in its most recent ORDER involves time periods

when the Courts were open for business and available to the respective Petitioner/Defendant. In fact, there are no cases that this Court can cite to where “equitable tolling” was denied when the entire District Court system, by its own ORDER, was closed for business.

As the “Standing Orders” from the District Court attached to Appellant’s application for appealability so indicate, the COVID-19 pandemic was so pervasive that the entire operation of the Federal District Court was shut down. Importantly, several other “timeliness” statutes were, by order, extended at the request of the Prosecution involving the “exclusion” of those same time periods involved in the Covid-19 closures.

As an example, in the “SEVENTH EXTENSION OF ADJUSTMENTS TO COURT OPERATIONS DUE TO THE EXIGENT CIRCUMSTANCES CREATED BY COVID-19”, the District Court stated:

“...Accordingly, the additional time period from November 2, 2020, through January 15, 2021, shall be excluded (emphasis added) under the Speedy Trial Act, 18 U.S.C. 3161(h)(7)(A), for all criminal cases impacted by this trial continuance. This period of exclusion is in addition to the period of exclusion previously granted for the time period from March 13, 2020, through December 31, 2020.”

Thus, the court “excluded” court closure time and therefore lengthened the time period in which a defendant could be prosecuted.

Should a defendant file a motion for dismissal pursuant to a violation of his constitutional right to a speedy trial, the court’s ORDER would excuse the time under this COVID-19 shut down in favor of the Prosecution and against the Defendant. For

each STANDING COVID-19 ORDER submitted by the Appellant herein, there is “exclusion” of time which favors the Prosecution.

What this Court has chosen to do is apply case law that was previously created at a time when there was no COVID-19 shutdown resulting in improper denying of Appellant’s access to be heard. Under this Court’s analysis, even if the COVID-19 STANDING ORDERS were lifted 2 days before the one-year statute of limitations ran and Appellant failed to file, he would be shut out and his habeas would be denied for untimeliness by citing the Ross case at 803.

A court shut down of this magnitude has never occurred such that for the Court to hold an appellant to the standards as explained in Holland v Florida, 560 U.S. 631 (2010), which involved a time when the court system was open and available is not “justice for all”. As discussed in Merritt v. Blaine, 326 F.3d 157, 168 (3d Cir.2003), equitable tolling is available when the principle of equity would make the rigid application of a limitation period unfair.

In Appellant’s case, the failure to exclude those 115 days (September 23, 2020, through January 15, 2021) while the COVID-19 STANDING ORDERS were in effect, and thereby include such time while the filing Court’s own Orders say otherwise, goes against those very principles of equity the Third Circuit Court spoke of in Merritt.

Furthermore, what the Third Circuit Court is essentially doing is creating a de facto amendment of the 2254 statute by setting aside the time period explicitly granted by Congress therein.

The one-year AEDPA statute under 2254 grants a petitioner 365 days to file; what the Third Circuit's ruling does is reduce this Appellant's time by 115 days by failing to exclude the COVID-19 shutdown period which prevented any filing by Appellant.

Even under 28 U.S.C. 2244(d)(1)(B) an "impediment" to filing an application created by state action qualifies for statutory tolling and thus extends the time to file while the impediment exists.

Appellant's case herein involves an impediment by the District Court (closure of the court within the state where Appellant would have to file) to filing an application. The Third Circuit Court's decision, however, fails to exclude such time and extend Appellant's time for filing, thus giving Appellant, contrary to 2254's mandate, only 250 days to file his habeas petition.

Fundamental fairness is the bedrock of our judicial system and would be sorely lacking in this case if the court does not exclude the time period when the courts were closed.

Simply put, the Prosecution gets to have the benefit of additional time, but the defendants do not.

The totality of the Petitioner's circumstances demands that equitable tolling be applied. Petitioner was incarcerated in a state prison which was shut down during the heights of the Covid-19 pandemic. Petitioner could not have visits including from any attorneys; could not have filed any papers with any courts as shutdowns included any outside contact. The Federal District Court had ordered a shutdown of all

operations. The Petitioner's extraordinary circumstances were beyond his control. Monroe v. United States, No. 4:17-cv-11, 2020 WL 6547646, (E.D.V.A. Nov. 6, 2020).

Likewise in Maury v. Davis, No.2:12 cv-1043, 2020 WL 5088738, (E.D. Cal., Aug. 28, 2020) tolling was allowed for time lost during shutdowns.

COVID was a "shutdown" of colossal proportions. This circumstance is the type of extraordinary circumstance that warrants equitable tolling. Monroe.

The Court should grant this Writ as there are conflicts in various circuits regarding whether the Covid-19 pandemic and shutdowns therefrom warrant equitable tolling to be applicable for the period of the shutdowns. This Court is in a unique position to settle the conflict among the districts.

X. CONCLUSION

The Court should grant this Writ as there are conflicts in various circuits regarding whether the Covid-19 pandemic and shutdowns therefrom warrant equitable tolling to be applicable for the period of the shutdowns. This Court is in a unique position to settle the conflict among the districts.

Respectfully submitted,

/s/ Nicholas J. Casamento
Nicholas Casamento, Esquire
4 West Front Street
Media, PA 19063
Phone: (610) 565-5050
Fax: (610) 565-2980
Email: candrlawfirm@gmail.com

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APPENDIX 1

ORDER 3-29-2023 DENYING REHEARING

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
NO: 22-2681**

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 22-2681

BREON POWELL,
Appellant

v.

SUPERINTENDENT HUNTINGDON SCI, et al.

(D.C. Civ. No.: 2-21-cv-05214)

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, JORDAN, HARDIMAN, GREENAWAY, JR.,
SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, and
FREEMAN, *Circuit Judges*.

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Thomas M. Hardiman
Circuit Judge

Dated: March 29, 2023

kr/cc: All Counsel of Record

APPENDIX 2

ORDER 1-27-2023 DENYING CERTIFICATE OF APPEALIBILITY

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO: 22-2681

ALD-059

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **22-2681**

BREON POWELL, Appellant

VS.

SUPERINTENDENT HUNTINGDON SCI, ET AL

(E.D. Pa. Civ. No. 2:21-cv-05214)

Present: HARDIMAN, RESTREPO, and BIBAS, Circuit Judges

Submitted are:

- (1) Appellant's motion for a certificate of appealability under 28 U.S.C. § 2253(c)(1); and
- (2) Appellees' response in opposition to the issuance of a certificate of appealability

in the above-captioned case.

Respectfully,

Clerk

ORDER

The foregoing request for a certificate of appealability is denied because reasonable jurists would not debate the District Court's conclusion that Powell's 28 U.S.C. § 2254 habeas petition is barred by the one-year statute of limitations. See 28 U.S.C. § 2244(d)(1); Slack v. McDaniel, 529 U.S. 473, 484 (2000). Powell has not made a substantial showing that his petition would be rendered timely through the application of statutory tolling, see § 2244(d)(2), or equitable tolling, see Holland v. Florida, 560 U.S. 631, 649 (2010). Notably, Powell has not shown how the District Court's COVID-19 standing order prevented him from filing a timely petition after that order expired. See Ross v. Varano, 712 F.3d 784, 803 (3d Cir. 2013) (explaining that, in the context of equitably tolling the time to file a habeas petition, a petitioner must show "a causal

connection, or nexus, between the extraordinary circumstances he faced and the petitioner's failure to file a timely federal petition"). Further, Powell's Fourth Amendment claim is noncognizable on federal habeas review. See Stone v. Powell, 428 U.S. 465, 494 (1976).

By the Court,

s/ Thomas M. Hardiman
Circuit Judge

Dated: January 27, 2023
PDB/KR/cc: All Counsel of Record



A True Copy:

Patricia S. Dodszeit

Patricia S. Dodszeit, Clerk
Certified Order Issued in Lieu of Mandate

PATRICIA S. DODSZUWEIT

CLERK



OFFICE OF THE CLERK

UNITED STATES COURT OF APPEALS

21400 UNITED STATES COURTHOUSE
601 MARKET STREET

PHILADELPHIA, PA 19106-1790

Website: www.ca3.uscourts.gov

TELEPHONE

215-597-2995

January 27, 2023

Eric R. Alkon
Bucks County Office of District Attorney
Bucks County Justice Center
100 North Main Street
Doylestown, PA 18901

Nicholas Casamento
Casamento & Ratasiewicz
4 West Front Street
Suite 6050
Media, PA 19063

Ronald Eisenberg
Office of Attorney General of Pennsylvania
1600 Arch Street
Suite 300
Philadelphia, PA 19103

Joseph A. Ratasiewicz
Casamento & Ratasiewicz
4 West Front Street
Suite 6050
Media, PA 19063

RE: Breon Powell v. Superintendent Huntingdon SCI, et al
Case Number: 22-2681
District Court Case Number: 2-21-cv-05214

ENTRY OF JUDGMENT

Today, **January 27, 2023** the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).

15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

For the Court,

s/ Patricia S. Dodszuweit,
Clerk

cc:

Mr. George V. Wylesol

APPENDIX 3

ORDER 3-30-2022 DENYING HABEAS CORPUS

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
NO: 2021-CV-5214**

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BREON POWELL	:	CIVIL ACTION
	:	
v.	:	
	:	
DUANE BLACK, <i>et al.</i>	:	NO. 21-5214

ORDER

AND NOW, this day of , 2022, upon consideration of the Petition for Writ of Habeas Corpus, the Commonwealth's Answer, the Petitioner's Response to the Answer, the other documents filed by the parties, and after review of the Report and Recommendation of United States Magistrate Judge Carol Sandra Moore Wells, is hereby **ORDERED** that:

1. The Report and Recommendation is **APPROVED and ADOPTED**;
2. The Petition for a Writ of Habeas Corpus is **DISMISSED**, without an evidentiary hearing; and
3. Petitioner has neither shown denial of a federal constitutional right, nor established that reasonable jurists would disagree with this court's procedural disposition of his claims. Consequently, a certificate of appealability is **DENIED**.

IT IS SO ORDERED.

BY THE COURT:

Gerald A. McHugh, J.

APPENDIX 4

**ORDER 3-30-2022
REPORT AND RECOMMENDATION DENYING HABEAS CORPUS**

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
NO 2021-CV-5214**

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BREON POWELL	:	CIVIL ACTION
	:	
v.	:	
	:	
DUANE BLACK, <i>et al.</i>	:	NO. 21-5214

REPORT AND RECOMMENDATION

CAROL SANDRA MOORE WELLS
UNITED STATES MAGISTRATE JUDGE

March 30, 2022

Presently before the court is a counseled Petition for a Writ of Habeas Corpus filed by Breon Powell (“Petitioner”), pursuant to 28 U.S.C. § 2254. Petitioner, a state prisoner, is currently serving a life term of incarceration at the State Correctional Institution-Hunterdon. He seeks habeas relief based on claims of due process and Fourth Amendment violations, as well as ineffective assistance of counsel. The Honorable Gerald A. McHugh referred this matter to the undersigned for preparation of a Report and Recommendation, pursuant to 28 U.S.C. § 636(b)(1)(B). For the reasons set forth below, it is recommended that the habeas petition be dismissed, without an evidentiary hearing.

I. FACTUAL AND PROCEDURAL HISTORY¹

On October 7, 2013, Petitioner was convicted, in the Court of Common Pleas for Bucks County, of first degree murder, robbery, conspiracy to commit robbery and possession of an instrument of crime. Am. Pet. at ¶ 1. Petitioner then filed post-sentence motions and a notice of appeal. *Id.*, at ¶ 8. The Pennsylvania Superior Court affirmed the judgment of sentence, on September 25, 2017. *Id.*, at ¶ 9. The Pennsylvania Supreme Court denied allowance of appeal, on April 3, 2018. *Id.*, at ¶ 10. Petitioner did not seek *certiorari* in the U.S. Supreme Court.

¹ The facts set forth in this background and procedural history were gleaned from Petitioner’s Habeas Corpus Petition, his attached Amended Petition, the Commonwealth’s Answer thereto, and Petitioner’s Response to that Answer.

On September 21, 2018, Petitioner's Post Conviction Relief Act ("PCRA") petition was filed. Am. Pet. at ¶ 11. Appointed counsel filed an amended petition, on March 29, 2019. *Id.*, at ¶ 12. The PCRA court denied relief and Petitioner appealed. *Id.*, at ¶ 13. The Superior Court affirmed the denial of PCRA relief, on April 29, 2020. *Id.* The Pennsylvania Supreme Court denied allowance of appeal, on September 23, 2020. *Id.* Petitioner did not seek *certiorari* in the U.S. Supreme Court.

On September 23, 2021, Petitioner's attorneys filed his habeas petition in the U.S. District Court for the Middle District of Pennsylvania. That court transferred the case to this district court and, on December 9, 2021, Petitioner was ordered to use the form of petition used in this district court. Petitioner did so, on January 10, 2022, claiming: (1) the trial court violated Petitioner's due process rights when it reversed its pre-trial decision to preclude prejudicial testimony about a prior, uncharged, alleged robbery; (2) the trial court violated the Fourth Amendment when it allowed the prosecution to admit evidence seized from Petitioner's cell phone without a warrant. Am. Pet. at ¶¶ 31, 33. Petitioner also claims that trial counsel rendered ineffective assistance by: (3) causing the trial court to admit evidence concerning a prior robbery involving witness Henderson, as a result of counsel's cross-examination of Henderson; (4) failing to call three alibi witnesses that Petitioner had identified and were available at trial; (5) failing to inform Petitioner that – during the trial – the trial judge revealed to all attorneys that her daughter was being prosecuted by the Bucks County District Attorney's office; and (6) failing to inform Petitioner that co-trial counsel was also being prosecuted by the Bucks County District Attorney's office for a DUI charge. Am. Pet. at ¶¶ 34-35, 37, 38, 40. The Commonwealth argues, *inter alia*, that all of Petitioner's claims are time-barred. Answer at 8-12. The Commonwealth also argues that Petitioner's first claim is not cognizable and his Fourth Amendment claim is barred by *Stone v. Powell*, 428 U.S. 465 (1976).

Answer at 12-15. This court finds that claim two, Petitioner's Fourth Amendment claim, is barred by *Stone* and that his other claims are time-barred.

II. DISCUSSION

A. Claim Two is Barred by *Stone v. Powell*

Claim two asserts that Petitioner's Fourth Amendment rights were violated because the Commonwealth was allowed to introduce at trial evidence obtained from a warrantless search of his cellphone. Am. Pet. at ¶ 33. Petitioner asserts that this evidence was also used to obtain a wiretap, which yielded evidence used against him at trial. *Id.* The Commonwealth counters, correctly, that this claim is barred by *Stone v. Powell*. Answer at 14, 15.

In *Stone*, the Supreme Court held that federal habeas relief cannot be granted based upon a Fourth Amendment claim, if the petitioner had the opportunity to litigate his Fourth Amendment claim in state court. 428 U.S. at 494. This bar to habeas relief is applicable so long as there is no structural defect in the state court that would have prevented consideration of the petitioner's Fourth Amendment claim. *Marshall v. Hendricks*, 307 F.3d 36, 82 (3d Cir. 2002).

Herein, Petitioner challenged the wiretaps that, he alleges, were obtained after a warrantless search of his cell phone. *Commonwealth v. Powell*, 171 A.3d 294, 310-14 (Pa. Super. Ct. 2017). Petitioner did not challenge the Fourth Amendment violation that led to the wiretaps being issued. *Id.* However, it is clear that no structural defect in the state court prevented consideration of Petitioner's Fourth Amendment claim. Therefore, that claim is now barred by *Stone v. Powell*. *See Marshall*, 307 F.3d at 82.

A. The AEDPA Statute of Limitations

The Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), enacted on April 24, 1996, imposes a one year period of limitations ("AEDPA year") for habeas corpus petitions.

The time period (the “AEDPA year”) begins to run from the latest of the following:

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims could have been discovered through the exercise of due diligence.

28 U.S.C. § 2244(d)(1)(A)-(D). The Third Circuit has held that the starting date for the habeas period of limitations must be determined separately for each cognizable claim contained in the petition. *See Fiedler v. Varner*, 379 F.3d 113, 117-18 (3d Cir. 2004).

Petitioner did not seek *certiorari* after the Pennsylvania Supreme Court denied allowance of appeal, on April 3, 2018. Consequently, his conviction became final 90 days later, on July 2, 2018. *See* Sup. Ct. R. 13(1); 28 U.S.C. § 2244(d)(1)(A). This is the appropriate starting date for all of his remaining claims.² His AEDPA year expired one year later, on July 2, 2019. Unless grounds for statutory or equitable tolling can be demonstrated, Petitioner’s claims are untimely and must be dismissed.

B. Statutory and Equitable Tolling

1. Statutory Tolling

Statutory tolling provisions provide that, “[t]he time that a properly filed application for

² In his response to the Answer, Petitioner does not argue that a different starting date should apply to any of his claims. *See* Pet’r Resp. at 1-4.

state post-conviction or other collateral relief with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this section.” 28 U.S.C. § 2244(d)(2). A properly filed application for state collateral relief is one submitted in compliance with the applicable rules governing filings such as the form of the document, the time limits on filing, the court and office in which it must be filed and the requisite filing fees.³ *Artuz v. Bennett*, 531 U.S. 4, 8 (2000). Answering a question left open in *Artuz*, the U.S. Supreme Court later explained that, despite enumerated exceptions to the timely filing requirement, an untimely PCRA petition is not “properly filed” and cannot statutorily toll the federal habeas period of limitations. *Pace v. DiGuglielmo*, 544 U.S. 408, 413-17 (2005).

Petitioner filed his PCRA petition on September 21, 2018. Am Pet. at ¶ 11. By that date, 82 days of his AEDPA year had expired, leaving 283. Statutory tolling ceased on September 23, 2020, when the Pennsylvania Supreme Court denied allowance of appeal. *Lawrence v. Florida*, 549 U.S. 327, 332 (2007). Petitioner’s AEDPA year began to run again and it expired 283 days later, on July 6, 2021.⁴ Petitioner did not file his habeas petition until September 23, 2021, meaning it was 80 days too late. Nevertheless, Petitioner may be eligible for equitable tolling.

2. Equitable Tolling

Equitable tolling is available “only when the principle of equity would make the rigid application of a limitation period unfair.” *Merritt v. Blaine*, 326 F.3332d 157, 168 (3d Cir. 2003) (internal quotations omitted). Courts should apply this doctrine sparingly. *LaCava v. Kyler*, 398 F.3d 271, 275 (3d Cir. 2005). The general requirements for equitable tolling are: (1) the petitioner exercised diligence in pursuing his rights, and (2) extraordinary circumstances prevented timely

³ The U.S. Supreme Court initially declined to decide whether the existence of exceptions to a timely filing requirement can prevent a late application from being considered improperly filed. *Artuz*, 531 U.S. at 8 n.2.

⁴ The 283rd day fell on July 3, 2021, which was a Saturday. The July 4th federal holiday was observed on Monday, July 5, 2021; hence, Petitioner’s AEDPA year expired on Tuesday, July 6, 2021.

filing. *Holland v. Florida*, 560 U.S. 631, 649 (2010). The petitioner bears the burden of proving both requirements. *Pace*, 544 U.S. at 418; *Urcinoli v. Cathel*, 546 F.3d 269, 273 (3d Cir. 2008).

Petitioner asserts that he is entitled to equitable tolling. Pet'r Resp. at 1-4. Petitioner's initial assertions address his diligence, before filing his PCRA petition and while it was pending, but do not address any extraordinary circumstances at that time. *See id.* at 1-3. The problem with this argument is twofold: it addresses a time when statutory tolling was in effect and there is no mention of extraordinary circumstances, both of which are required. *Holland*, 560 U.S. at 649. Next, Petitioner argues that, for the period of time after the Pennsylvania Supreme Court denied allowance of appeal, on September 23, 2020, until he filed his habeas petition, the conditions caused by the COVID-19 pandemic should excuse his untimeliness. *See* Pet'r Reply at 3-4. While the COVID-19 pandemic could be considered an extraordinary circumstance for purposes of equitable tolling, that does not address Petitioner's diligence. When the Pennsylvania Supreme Court denied allowance of appeal, on September 23, 2020, Petitioner still had 283 days to timely file a habeas petition. He does not explain why he did not file within that time or what effort he made in that time period. In fact, it seems that Petitioner did not even consult with his current attorneys until September 2021, *see id.* at 2, which was well after statutory tolling ended. Hence, the court declines to find that Petitioner is entitled to equitable tolling.⁵

III. CONCLUSION

Petitioner's second claim is barred by *Stone v. Powell*; his other claims are time-barred. Reasonable jurists would not debate this court's procedural disposition of his claim; therefore a certificate of appealability should not issue. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Accordingly, I make the following:

⁵ Petitioner has also failed to advance any new, reliable evidence of his actual innocence to avoid time-bar. *See McGuiggin v. Perkins*, 569 U.S. 383, 386 (2013).

RECOMMENDATION

AND NOW, this 30th day of March, 2022, for the reasons contained in the preceding Report, it is hereby **RECOMMENDED** that Petitioner's claim be **DISMISSED**, without an evidentiary hearing. Petitioner has neither demonstrated that any reasonable jurist could find this court's procedural rulings debatable, nor shown denial of any federal constitutional right; hence, there is no probable cause to issue a certificate of appealability.

Petitioner may file objections to this Report and Recommendation within fourteen (14) days of being served with a copy of it. *See* Local R. Civ. P. 72.1(IV). Failure to file timely objections may constitute a waiver of any appellate rights.

It be so **ORDERED**.

/s/ Carol Sandra Moore Wells
CAROL SANDRA MOORE WELLS
United States Magistrate Judge

APPENDIX 5

**STANDNG ORDER 8-31-2020 IN RE: FIFTH ADJUSTMENT TO THE
COURT OPERATIONS DUE TO THE EXTIGENT CIRCUMSTANCES
CREATED BY COVID-19**

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:

**FIFTH EXTENSION OF
ADJUSTMENTS TO COURT
OPERATIONS DUE TO THE
EXIGENT CIRCUMSTANCES
CREATED BY COVID-19**

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STANDING ORDER

This Order is issued in furtherance of the Court's prior Standing Orders issued on March 13, 2020, March 18, 2020, April 10, 2020, May 29, 2020, June 30, 2020, and July 31, 2020, which implemented and extended certain adjustments to Court operations due to the exigent circumstances created by the ongoing coronavirus disease 2019 (COVID-19) pandemic and in the interest of public health and safety. This Order addresses civil and criminal jury selections and jury trials, as well as grand jury selections, all of which were previously continued through August 31, 2020. It also addresses Central Violations Bureau proceedings, which were previously continued pending further Court order.

The COVID-19 pandemic continues to significantly impact Court operations in this district, as outlined in the Court's prior Standing Orders. The national emergency declared by the President under the National Emergencies Act, 50 U.S.C. § 1601 et seq., with respect to COVID-19 remains ongoing. The finding by the Judicial Conference of the United States that emergency conditions due to the COVID-19 national emergency have materially affected and will materially affect the functioning of the federal courts generally also remains in effect.

Within the Commonwealth of Pennsylvania, the Governor has extended his declaration of a disaster emergency due to the COVID-19 pandemic. There have been more than 137,000 cases of COVID-19 in Pennsylvania to date, including more than 89,000 cases in this district. In the

past few months, the Commonwealth has undertaken a phased reopening pursuant to the Governor's Process to Reopen Pennsylvania. As part of this process, the stay-at-home orders previously in place in the counties in this district have been lifted, and some of the other restrictions previously in effect have been eased as the counties in this district have transitioned to the "yellow" and "green" phases of the Governor's plan. As the virus continues to circulate, however, many restrictions remain, and new mitigation measures have been implemented. Even in the "green" phase, masks or face coverings must be worn in public settings, six-foot physical distancing must be maintained, and indoor gatherings of more than 25 persons are prohibited. Businesses are required to conduct their operations through individual teleworking whenever possible and, if conducting in-person operations, must comply with all applicable guidance issued by the Governor, the Department of Health, and the Centers for Disease Control and Prevention (CDC). In addition, individuals who travel to areas with a high number of COVID-19 cases are advised to quarantine for 14 days upon their return to Pennsylvania.

The CDC and State and local public health authorities continue to emphasize the need for precautions to avoid exposure to the virus and prevent its spread. Recommended precautions include maintaining six feet of physical distance from others, wearing masks or face coverings in public, limiting nonessential travel, avoiding public transportation when possible, working from home, avoiding large gatherings, limiting the number and duration of in-person interactions, and regularly cleaning and disinfecting frequently touched surfaces.

With the lifting of the stay-at-home orders in the counties in this district in June 2020, this Court also began the process of reopening pursuant to the Federal Judiciary COVID-19 Recovery Guidelines issued by the Administrative Office of the U.S. Courts. The Court is committed to reopening gradually and cautiously to protect the health and safety of Court employees and all

those entering Court facilities and to mitigate the risk of a resurgence of new COVID-19 cases. To that end, the Court has continued to carefully monitor the COVID-19 data for this district and the available guidance from government officials and public health authorities to ensure that any increases in on-site activity can be accomplished safely.

In the initial phase of reopening, the Court began bringing additional employees into the courthouse on a rotating basis and resumed holding a limited number of essential in-person proceedings in a limited number of designated courtrooms to ensure that the courtrooms in use could be adequately cleaned and disinfected between proceedings. During this phase, criminal proceedings and shorter proceedings with fewer participants have been prioritized.

The Court has also been carefully planning for the resumption of jury trials, which pose additional challenges during the pandemic due to their longer duration and the large number of people involved, including jurors who often must travel significant distances to participate. The Court has been developing guidelines for the reinstitution of jury trials in this district with the goal of allowing jury trials to proceed safely and in accordance with public health guidance. The guidelines include a number of health and safety precautions, and trials conducted pursuant to the guidelines will require more staff and space than would be required in ordinary circumstances. For example, to limit the number of people in one room at a time and to ensure adequate space for physical distancing, jury selection for each trial will require the use of four courtrooms as well as the jury assembly room. Once a jury is selected, two courtrooms will be used for each trial, and an additional courtroom will be used to allow the public to observe the proceedings. To limit the number of jurors in the courthouse at one time and to ensure adequate staffing and the availability of sufficient space for jury selection and trial, only one trial will be conducted at a time, at least initially. Thus, while the Court anticipates that jury trials may resume on a limited basis in mid-

September, due to the health and safety considerations outlined above, it will be possible to convene only a small number of jury trials in September and October.

As jury trials resume on this limited basis, criminal cases will be prioritized. The Court has worked with representatives of the U.S. Attorney's Office and the Federal Community Defender Office in this district to identify those cases that are ready to proceed to trial and to prioritize the cases suitable to proceed in the initial round of jury trials. All other trials will be continued in the interest of health and safety due to the ongoing public health emergency and its impact on Court operations. It is therefore ORDERED as follows:

1. All civil jury selections and jury trials scheduled to begin before November 2, 2020, before any district or magistrate judge in any courthouse or Court location in this district are CONTINUED pending further Court order.

2. With the exception of the limited number of cases designated for trial in September or October pursuant to the procedure described above, all criminal jury selections and jury trials scheduled to begin before November 2, 2020, before any district or magistrate judge in any courthouse or Court location in this district are CONTINUED pending further Court order.

3. All jury selections and jury trials impacted by this Standing Order will be rescheduled by the presiding judge. Aside from ordering a jury trial, individual judges presiding over criminal proceedings may take such actions consistent with this Standing Order as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties.

4. With respect to criminal trials continued by this Standing Order, the Court is cognizant of the right of criminal defendants to a speedy and public trial under the Sixth Amendment and the particular application of that right in cases involving defendants who are

detained pending trial. In light of the circumstances regarding the COVID-19 pandemic and its impact on Court operations outlined above and in the Court's prior Standing Orders, the Court finds the ends of justice served by granting a continuance outweigh the best interest of the public and each defendant in a speedy trial. For trials continued by this Standing Order, given the current circumstances regarding COVID-19 in this district and the precautions necessary to protect health and safety during a jury trial, failure to postpone these jury trials through November 2, 2020, would be likely to make the continuation of such trials impossible or result in a miscarriage of justice. Accordingly, the additional time period from August 31, 2020, through November 2, 2020, shall be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), for all criminal cases impacted by this trial continuance. This period of exclusion is in addition to the period of exclusion previously granted for the time period from March 13, 2020, through August 31, 2020. The Court may extend the period of exclusion by further order as circumstances may warrant, and the presiding judge in any criminal case for which trial is continued under this Standing Order may make any additional findings and exclude additional time, as necessary and appropriate, regarding the scheduling of any new date for trial. Any motion by a criminal defendant seeking an exception to this Standing Order for the purpose of exercising the defendant's speedy trial rights shall be referred to the Chief Judge.

5. Grand jury selections may resume in September 2020, if conditions allow and with appropriate health and safety precautions in place. Because grand jury selections will involve the same precautions as petit jury selections, grand jury selections will not be held on days when petit jury selections are occurring.

6. Central Violations Bureau proceedings may resume in September 2020, if conditions allow and with appropriate health and safety precautions in place.

Except as modified herein, the May 29, 2020, June 30, 2020, and July 31, 2020, Standing Orders remain in effect.

IT IS SO ORDERED.

/s/ Juan R. Sánchez
Juan R. Sánchez
Chief Judge

Date: August 31, 2020

APPENDIX 6

**STANDNG ORDER 9-24-2020 IN RE: VIDEO TELECONFERENCING
AND TELEPHONE CONFERENCING FOR CRIMINAL PROCEEDINGS
UNDER THE CARES ACT – SECOND EXTENSION**

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:

**VIDEO TELECONFERENCING AND
TELEPHONE CONFERENCING FOR
CRIMINAL PROCEEDINGS UNDER
THE CARES ACT – SECOND
EXTENSION**

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STANDING ORDER

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was enacted, authorizing the use of video teleconferencing and telephone conferencing, under certain circumstances and with the consent of the defendant, for various criminal case events during the course of the COVID-19 national emergency. *See* Pub. L. No. 116-136, § 15002, 134 Stat. 281, 527-30 (2020). On March 29, 2020, the Judicial Conference of the United States found, pursuant to the CARES Act, that emergency conditions due to the national emergency declared by the President with respect to COVID-19 have materially affected and will materially affect the functioning of the federal courts generally.

On March 30, 2020, the undersigned, as Chief Judge and pursuant to the authority granted by the CARES Act to chief judges of district courts covered by the Judicial Conference's finding, issued a Standing Order finding that emergency conditions due to the COVID-19 national emergency were continuing to materially affect the functioning of this district and authorizing the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, with the consent of the defendant after consultation with counsel, for all of the criminal case events listed in Section 15002(b) of the CARES Act. The Order also included a finding that felony pleas under Rule 11 of the Federal Rules of Criminal Procedure and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure could not be conducted in

person in this district without seriously jeopardizing public health and safety. Based on this finding, the Order provided that, if a district judge in an individual case found, for specific reasons, that a felony plea or sentencing in that case could not be further delayed without serious harm to the interests of justice, the judge could, with the consent of the defendant after consultation with counsel, use video teleconferencing, or telephone conferencing, if video teleconferencing was not reasonably available, for the felony plea or sentencing in that case.

On June 26, 2020, pursuant to Section 15002(b)(3) of the CARES Act, I reviewed the foregoing authorization and issued a Standing Order extending the authorization for an additional 90 days. The June 26 Order provided that the authorization would remain in effect for 90 days, until September 24, 2020, unless terminated earlier, and that if emergency conditions continued to exist 90 days from the date of the Order, I would again review the authorization and determine whether to extend it.

As of this date, the President's national emergency declaration has not been terminated, and the Judicial Conference's finding that emergency conditions due to the COVID-19 national emergency have materially affected and will materially affect the functioning of the federal courts generally remains in effect. Emergency conditions also continue to materially affect the functioning of this district, as described in the Standing Orders currently in effect in this district due to the COVID-19 pandemic. I further find that many felony pleas under Rule 11 of the Federal Rules of Criminal Procedure and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure still cannot be conducted in person in this district without seriously jeopardizing public health and safety. While the Court has resumed holding some essential in-person proceedings, including some felony pleas and sentencings, the Court is continuing to use video teleconferencing and telephone conferencing for court proceedings to the greatest extent

possible to protect the health and safety of all case participants, including judges, court staff, attorneys, and parties, especially those at increased risk of serious illness from COVID-19. Health and safety considerations also limit the number and type of in-person proceedings that can be safely conducted at this time. For health and safety reasons, in-person proceedings may be held in only a small number of designated courtrooms, limiting the number of proceedings that may be held each week. In-person proceedings may also pose particular safety concerns for those at increased risk of serious illness from COVID-19. Given the size of the Court and the substantial limitations on the Court's ability to conduct in-person proceedings at this time, the use of video teleconferencing and telephone conferencing remains necessary for criminal case events in this district, including felony pleas and felony sentencings.

Accordingly, upon review of the authorization of video teleconferencing and telephone conferencing for criminal case events set forth in the March 30 Standing Order and extended by the June 26 Standing Order, as required under Section 15002(b)(3) of the CARES Act, it is ORDERED the authorization is extended for an additional 90 days from the date of this Order, unless terminated earlier. Specifically, with the consent of the defendant or juvenile after consultation with counsel, video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, is authorized to be used for all criminal case events listed in Section 15002(b) of the CARES Act. In addition, if a district judge in an individual case finds, for specific reasons, that a felony plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice, the judge may, with the consent of the defendant after consultation with counsel, use video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, for the felony plea or sentencing in that case. Judges

may also use this authority for equivalent events in juvenile cases as described in Section 15002(b)(2)(B).

If emergency conditions continue to exist 90 days from the date of this Order, I will again review this authorization and determine whether to further extend it.

/s/ Juan R. Sánchez
Juan R. Sánchez
Chief Judge

Date: September 24, 2020

APPENDIX 7

**STANDNG ORDER 10-5-2020 IN RE: CONDUCTING ARBITRATION
HEARING BY VIDEOCONFERNCE**

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:

**CONDUCTING ARBITRATION
HEARINGS BY
VIDEOCONFERENCE**

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STANDING ORDER

In light of the exigent circumstances created by the ongoing coronavirus disease 2019 (COVID-19) pandemic and in the interest of public health and safety, as well as in keeping with the Court's Standing Orders issued on March 18, 2020, April 10, 2020, May 29, 2020, and June 30, 2020, which implemented and extended certain adjustments to Court operations, including the continuance of all arbitration hearings pursuant to Local Civil Rule 53.2, the Court issues the following Standing Order, effective immediately:

1. The requirement set forth in Local Civil Rule 53.2, subsection 5A, stating that an arbitration trial shall take place in the United States Courthouse, is suspended in order to allow arbitration trials to be conducted remotely by videoconference. This suspension is necessary because conducting arbitration trials remotely by videoconference eliminates the need for in-person gatherings, which would normally include arbitrators, parties, counsel, witnesses, and Court staff, and minimizes the need for travel, especially by public conveyance, by any participant. Arbitration trials which would otherwise be continued for an unknown duration due to the reduced number of available courtrooms, which must be reserved for specific categories of trials and other hearings, may now proceed by videoconference and parties may obtain resolution in their cases.

2. Suspension of subsection 5A is only for the purpose of allowing arbitration trials to be conducted remotely by videoconference. Arbitration trials may not be physically held in any alternative locations. As would be the case if the arbitration trials were held in the United States Courthouse, no person who has not been hired by a party to perform transcription services may record the video or audio of the arbitration trial, and failure to comply with this prohibition may result in the imposition of sanctions.
3. Parties must either consent or decline to have the arbitration trial conducted remotely by videoconference by completing and electronically filing a Consent/Declination of Consent form that will be docketed in each case awaiting an arbitration trial. Arbitration trials for parties who consent to proceed by videoconference will be scheduled upon receipt of the completed form on a rolling basis. Parties who do not consent to the arbitration trial being conducted remotely by videoconference remain subject to the continuance of arbitration hearings set forth in the Court's June 30, 2020 Standing Order.
4. The requirement set forth in Local Rule 53.2, subsection 4D, that the arbitration clerk provide the arbitrators with a copy of all pleadings, the court order referring the case to arbitration and designating the arbitrators, and guidelines for the arbitrators at the time the court order is entered, is suspended. Instead, no later than the next business day following the entry of the court's order setting forth the date of the arbitration trial and the names of the arbitrators assigned to the arbitration panel, the parties must send the arbitration clerk an email with a copy of the docket sheet and all relevant pleadings, in the form in which they appear on CM/ECF, as attachments. The arbitration clerk will then forward the documents to the arbitrators by email, along with a copy of the court's

order, the Guidelines for Participating in Arbitration Trials Conducted by Videoconference, and the Standing Procedural Order for Arbitration Trials Conducted by Videoconference.

5. The requirement set forth in Local Rule 53.2, subsection 6, that the arbitration award be filed with the court, is suspended and the arbitration chair should instead email the arbitration award to paed_arbitration@paed.uscourts.gov to facilitate entry of the award onto the docket.
6. Counsel, parties, and the members of the arbitration panel are required to review and comply with the Standing Procedural Order for Arbitration Trials Conducted by Videoconference as well as the Guidelines for Participating in Arbitration Trials Conducted by Videoconference. These documents are available on the court website at www.paed.uscourts.gov/services/arbitration and will be provided to the parties and the arbitrators as described above.
7. Except as modified herein with respect to arbitration hearings, the June 30, 2020 Standing Order remains in effect.

/s/ Juan R. Sánchez
Juan R. Sánchez
Chief Judge

Date: October 5, 2020

APPENDIX 8

**STANDNG ORDER 10-30-2020 IN RE: SIXTH ADJUSTMENT TO THE
COURT OPERATIONS DUE TO THE EXTIGENT CIRCUMSTANCES
CREATED BY COVID-19**

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:

**SIXTH EXTENSION OF
ADJUSTMENTS TO COURT
OPERATIONS DUE TO THE
EXIGENT CIRCUMSTANCES
CREATED BY COVID-19**

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STANDING ORDER

This Standing Order is issued in furtherance of the Court's prior Standing Orders issued on March 13, 2020, March 18, 2020, April 10, 2020, May 29, 2020, June 30, 2020, July 31, 2020, August 31, 2020, and October 5, 2020, which implemented and extended certain adjustments to Court operations due to the exigent circumstances created by the ongoing coronavirus disease 2019 (COVID-19) pandemic and in the interest of public health and safety. This Standing Order addresses civil and criminal jury selections and jury trials, which were previously continued through November 2, 2020, with limited exceptions.

The COVID-19 pandemic continues to significantly impact Court operations in this district, as outlined in the Court's prior Standing Orders. Since the August 31, 2020, Standing Order was issued, the number of cases of COVID-19 in the Commonwealth of Pennsylvania has increased to more than 200,000, including more than 120,000 cases in this district. Daily new case counts have also risen in recent weeks. Mitigation measures remain in place in the Commonwealth of Pennsylvania and in the City of Philadelphia, including the requirement that masks or face coverings must be worn in public settings and restrictions on the size of indoor events and gatherings. Businesses are required to conduct their operations through individual teleworking whenever possible and, if conducting in-person operations, must comply with all applicable guidance issued by the Governor, the Pennsylvania Department of Health, and the Centers for

Disease Control and Prevention (CDC), including guidance for social distancing and cleaning. In addition, individuals who travel to areas with a high number of COVID-19 cases are advised to quarantine for 14 days upon their return to Pennsylvania.

The CDC and State and local public health authorities also continue to emphasize the need for precautions to avoid exposure to the virus and prevent its spread, including maintaining six feet of physical distance from others, wearing masks or face coverings in public, limiting nonessential travel, avoiding public transportation when possible, working from home, avoiding large gatherings, limiting the number and duration of in-person interactions, and regularly cleaning and disinfecting frequently touched surfaces.

As the Court proceeds with its phased reopening pursuant to the Federal Judiciary COVID-19 Recovery Guidelines and its own COVID-19 Reopening Guidelines, the Court continues to carefully monitor the COVID-19 data for this district and the available guidance from government officials and public health authorities to ensure that any increases in on-site activity can be accomplished safely. In mid-September, the Court resumed holding jury trials on a limited basis pursuant to its Initial Guidelines for the Reinstitution of Jury Trials, which include a number of precautions to allow jury trials to proceed safely and in accordance with public health guidance. As explained in the August 31, 2020, Standing Order, trials conducted pursuant to the Initial Guidelines are both staff- and space-intensive. For example, to limit the number of people in one room at a time and to ensure adequate space for physical distancing, jury selection for each trial requires the use of four courtrooms as well as the jury assembly room. Once a jury is selected, two courtrooms are used for each trial, and a third courtroom is used to allow the public to observe the proceedings.

In light of the current conditions with respect to COVID-19 in this district, the Court remains in the initial test period for jury trials. During this period, in order to limit the number of jurors in the courthouse at one time and to ensure adequate staffing and the availability of sufficient space for jury selection and trial, only one jury trial may be conducted at a time. Since jury trials resumed the week of September 14, 2020, a total of four jury trials have been conducted to date. Due to the health and safety considerations outlined above, it is anticipated that no more than five jury trials will be conducted between now and December 31, 2020.

As jury trials proceed on this limited basis, criminal cases have been and will continue to be prioritized. The Court continues to work with representatives of the U.S. Attorney's Office and the Federal Community Defender Office in this district to identify those cases that are ready to proceed to trial and to prioritize the cases suitable to proceed in the initial round of jury trials. All other trials will be continued in the interest of health and safety due to the ongoing public health emergency and its impact on Court operations. It is therefore ORDERED as follows:

1. All civil jury selections and jury trials scheduled to begin on or before December 31, 2020, before any district or magistrate judge in any courthouse or Court location in this district are CONTINUED pending further Court order.

2. With the exception of the limited number of cases designated for trial in November or December pursuant to the procedure described above, all criminal jury selections and jury trials scheduled to begin on or before December 31, 2020, before any district or magistrate judge in any courthouse or Court location in this district are CONTINUED pending further Court order.

3. All jury selections and jury trials impacted by this Standing Order will be rescheduled by the presiding judge. Aside from ordering a jury trial, individual judges presiding over criminal proceedings may take such actions consistent with this Standing Order as may be

lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties.

4. With respect to criminal trials continued by this Standing Order, the Court is cognizant of the right of criminal defendants to a speedy and public trial under the Sixth Amendment and the particular application of that right in cases involving defendants who are detained pending trial. In light of the circumstances regarding the COVID-19 pandemic and its impact on Court operations outlined above and in the Court's prior Standing Orders, the Court finds the ends of justice served by granting a continuance outweigh the best interest of the public and each defendant in a speedy trial. For trials continued by this Standing Order, given the current circumstances regarding COVID-19 in this district and the precautions necessary to protect health and safety during a jury trial, failure to postpone these jury trials through December 31, 2020, would be likely to make the continuation of such trials impossible or result in a miscarriage of justice. Accordingly, the additional time period from November 2, 2020, through December 31, 2020, shall be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), for all criminal cases impacted by this trial continuance. This period of exclusion is in addition to the period of exclusion previously granted for the time period from March 13, 2020, through November 2, 2020. The Court may extend the period of exclusion by further order as circumstances may warrant, and the presiding judge in any criminal case for which trial is continued under this Standing Order may make any additional findings and exclude additional time, as necessary and appropriate, regarding the scheduling of any new date for trial. Any motion by a criminal defendant seeking an exception to this Standing Order for the purpose of exercising the defendant's speedy trial rights shall be referred to the Chief Judge.

Except as modified herein or by other Standing Orders issued since May 29, 2020, the May 29, 2020, Standing Order remains in effect.

IT IS SO ORDERED.

/s/ Juan R. Sánchez
Juan R. Sánchez
Chief Judge

Date: October 30, 2020

APPENDIX 9

**STANDNG ORDER 11-25-2020 IN RE: SEVENTH ADJUSTMENT TO THE
COURT OPERATIONS DUE TO THE EXTIGENT CIRCUMSTANCES
CREATED BY COVID-19**

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:

**SEVENTH EXTENSION OF
ADJUSTMENTS TO COURT
OPERATIONS DUE TO THE
EXIGENT CIRCUMSTANCES
CREATED BY COVID-19**

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STANDING ORDER

This Standing Order is issued in furtherance of the Court's prior Standing Orders issued on March 13, 2020, March 18, 2020, April 10, 2020, May 29, 2020, June 30, 2020, July 31, 2020, August 31, 2020, October 5, 2020, and October 30, 2020, which implemented and extended certain adjustments to Court operations due to the exigent circumstances created by the ongoing coronavirus disease 2019 (COVID-19) pandemic and in the interest of public health and safety. Although the most recent adjustments were intended to remain in effect through December 31, 2020, additional adjustments have become necessary due to the sustained and continuing increase in the number of COVID-19 cases in this district in recent weeks. This Standing Order is issued to implement these additional operational changes.

Since the onset of the pandemic, the Court has continued to closely monitor the COVID-19 outbreak in this district and the guidance available from government officials and public health authorities at the Federal, State, and local levels. In June 2020, following the lifting of the stay-at-home orders previously in place in the counties in this district, the Court began the process of reopening pursuant to the Federal Judiciary COVID-19 Recovery Guidelines and its own COVID-19 Reopening Guidelines, gradually increasing the level of on-site activity in courthouses and Court locations as conditions have allowed. In late June, the Court resumed holding a limited number of essential in-person proceedings in a limited number of designated courtrooms,

prioritizing criminal proceedings and shorter proceedings with fewer participants. In July, impaneled grand juries resumed meeting on a limited basis, with special precautions and accommodations in place to protect the health and safety of all participants. In September, the Court resumed holding Central Violations Bureau proceedings, with appropriate health and safety precautions in place. Also in September, after extensive planning, the Court resumed holding criminal jury trials on a limited basis pursuant to its Initial Guidelines for the Reinstitution of Jury Trials, which include numerous precautions to allow jury trials to proceed safely and in accordance with public health guidance. Since then, the Court has remained in the initial test period for jury trials, during which only one jury trial may be conducted at a time. As a result, all civil jury trials and most criminal jury trials remain continued through December 31, 2020. Following the resumption of jury trials, the Court has also conducted grand jury selections in accordance with the jury selection provisions of the Initial Guidelines for the Reinstitution of Jury Trials.

Since the October 30, 2020, Standing Order was issued, conditions with regard to the COVID-19 outbreak in the Commonwealth of Pennsylvania and in this district have materially worsened. The number of cases of COVID-19 in Pennsylvania has increased to more than 314,000, including more than 165,000 cases in this district. Daily COVID-19 case counts and hospitalizations in Pennsylvania have risen sharply in recent weeks and are now higher than at any time since the beginning of the pandemic. New case counts, incidence rates per 100,000 residents, PCR testing positivity rates, and average daily COVID-19-specific hospitalizations have increased in all counties in this district, and all counties in this district are currently experiencing substantial levels of community transmission of the virus. As these numbers trend upwards, the Court has seen an increase in the number of employees needing to quarantine due to actual or likely

community exposure to COVID-19. The rise in COVID-19 cases has also impacted the Federal Detention Center in Philadelphia, where numerous inmates and staff have tested positive.

In response to the continued rise in COVID-19 cases in Philadelphia, the Mayor and the Health Commissioner have issued new restrictions on businesses, events and gatherings, and other activities to prevent the spread of the virus. The new restrictions prohibit indoor gatherings of persons from more than one household in public or private spaces; prohibit in-person operations in a range of indoor business, educational, and recreational settings; and impose density limits on certain businesses and other establishments that are permitted to continue operations, including houses of worship. Work in office-based settings must be conducted remotely whenever possible, with on-site business operations subject to density limits and masking and social distancing requirements.

The Governor and the Secretary of Health have also announced new mitigation measures to help stop the spread of COVID-19 as cases surge in Pennsylvania. These measures include a strengthened masking order, which requires that masks be worn indoors whenever persons from more than one household are present, irrespective of physical distance; an order requiring individuals traveling into or returning to Pennsylvania from outside the Commonwealth to have a negative COVID-19 test from a specimen collected within 72 hours prior to entering the Commonwealth or to quarantine for 14 days upon entering; and revised mitigation and enforcement orders for businesses maintaining in-person operations, which require all businesses to conduct their operations remotely, through individual teleworking of their employees, unless impossible, and require businesses maintaining in-person operations to comply with safety measures, public health guidance, and reduced capacity limits. The Governor and Secretary of Health have also issued limited-time stay-at-home advisories, urging all Pennsylvanians to leave

home only to go to work or school or for essential needs, to avoid having individuals in their homes who are not part of their immediate households, to limit holiday celebrations to members of their households or limit the number of people present at such celebrations, and to avoid unnecessary travel.

Upon consideration of the current circumstances with respect to the COVID-19 outbreak in this district, including the circumstances described above as well those described in the prior Standing Orders, the Court finds it is necessary and appropriate to temporarily reduce the level of on-site activity at courthouses and Court locations in this district and to postpone certain in-person proceedings, particularly those that require large numbers of people to gather for extended periods of time, in order to protect public health and safety, including the safety of Court personnel and all persons entering courthouses and Court locations in this district. It is therefore ORDERED as follows:

1. All civil and criminal jury selections and jury trials scheduled to begin on or before January 15, 2021, before any district or magistrate judge in any courthouse or Court location in this district are CONTINUED pending further Court order.

2. All jury selections and jury trials impacted by this Standing Order will be rescheduled by the presiding judge. Aside from ordering a jury trial, individual judges presiding over criminal proceedings may take such actions consistent with this Standing Order as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties.

3. With respect to criminal trials continued by this Standing Order, the Court is cognizant of the right of criminal defendants to a speedy and public trial under the Sixth Amendment and the particular application of that right in cases involving defendants who are

detained pending trial. In light of the circumstances regarding the COVID-19 outbreak in this district outlined above and in the Court's prior Standing Orders, the Court finds the ends of justice served by granting a continuance outweigh the best interest of the public and each defendant in a speedy trial. The worsening conditions with respect to the COVID-19 outbreak in this district and the new restrictions and advisories impede the Court's ability to obtain an adequate complement of trial jurors at this time and impact the ability of Court personnel, counsel, defendants, and other case participants to be present during trial. Given current conditions as well as the large number of people that must be assembled to conduct a jury trial, the Court has determined it is not possible to conduct jury trials safely and in accordance with available public health guidance at this time. In these circumstances, and given the seriousness of the ongoing COVID-19 outbreak in this district, failure to postpone jury trials through January 15, 2021, would be likely to make the continuation of such trials impossible or result in a miscarriage of justice. Accordingly, the additional time period from November 2, 2020, through January 15, 2021, shall be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), for all criminal cases impacted by this trial continuance. This period of exclusion is in addition to the period of exclusion previously granted for the time period from March 13, 2020, through December 31, 2020. The Court may extend the period of exclusion by further order as circumstances may warrant, and the presiding judge in any criminal case for which trial is continued under this Standing Order may make any additional findings and exclude additional time, as necessary and appropriate, regarding the scheduling of any new date for trial. Any motion by a criminal defendant seeking an exception to this Standing Order for the purpose of exercising the defendant's speedy trial rights shall be referred to the Chief Judge.

4. Impaneled grand juries may continue to meet until December 7, 2020, with all health and safety precautions in place. Beginning December 7, 2020, impaneled grand juries shall not meet through January 15, 2021. Impaneled grand juries shall remain in session, and any subpoenas for ongoing and new investigations shall continue to be enforceable.

5. All Central Violations Bureau proceedings scheduled to occur on or before January 15, 2021, are CONTINUED pending further Court order.

6. Essential in-person proceedings may continue to be held in designated courtrooms in accordance with the current scheduling protocol, at the discretion of the presiding judge. Judges are encouraged to hold in-person proceedings only when absolutely necessary and to use video and telephone conferencing as much as possible.

Except as modified herein or by other Standing Orders issued since May 29, 2020, the May 29, 2020, Standing Order remains in effect.

IT IS SO ORDERED.

/s/ Juan R. Sánchez
Juan R. Sánchez
Chief Judge

Date: November 25, 2020

APPENDIX 10

**STANDNG ORDER 12-21-2020 IN RE: VIDEO TELECONFERNCING AND
TELEPHONE CONFERENCING FOR CRIMINAL PROCEEDINGS
UNDER THE CARES ACT – THIRD EXTENSION**

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:

**VIDEO TELECONFERENCING AND
TELEPHONE CONFERENCING FOR
CRIMINAL PROCEEDINGS UNDER
THE CARES ACT – THIRD
EXTENSION**

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STANDING ORDER

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was enacted, authorizing the use of video teleconferencing and telephone conferencing, under certain circumstances and with the consent of the defendant, for various criminal case events during the course of the COVID-19 national emergency. *See* Pub. L. No. 116-136, § 15002, 134 Stat. 281, 527-30 (2020). On March 29, 2020, the Judicial Conference of the United States found, pursuant to the CARES Act, that emergency conditions due to the national emergency declared by the President with respect to COVID-19 have materially affected and will materially affect the functioning of the federal courts generally.

On March 30, 2020, the undersigned, as Chief Judge and pursuant to the authority granted by the CARES Act to chief judges of district courts covered by the Judicial Conference's finding, issued a Standing Order finding that emergency conditions due to the COVID-19 national emergency were continuing to materially affect the functioning of this district and authorizing the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, with the consent of the defendant after consultation with counsel, for all of the criminal case events listed in Section 15002(b) of the CARES Act. The Order also included a finding that felony pleas under Rule 11 of the Federal Rules of Criminal Procedure and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure could not be conducted in

person in this district without seriously jeopardizing public health and safety. Based on this finding, the Order provided that, if a district judge in an individual case found, for specific reasons, that a felony plea or sentencing in that case could not be further delayed without serious harm to the interests of justice, the judge could, with the consent of the defendant after consultation with counsel, use video conferencing, or telephone conferencing if video conferencing was not reasonably available, for the felony plea or sentencing in that case.

On June 26, 2020, pursuant to Section 15002(b)(3) of the CARES Act, I reviewed the foregoing authorization and issued a Standing Order extending it for an additional 90 days. I again reviewed this authorization and issued a Standing Order further extending it on September 24, 2020. The September 24 Standing Order provided that the authorization would remain in effect for 90 days, unless terminated earlier, and that if emergency conditions continued to exist 90 days from the date of the Order, I would again review the authorization and determine whether to extend it.

As of this date, the President's national emergency declaration has not been terminated, and the Judicial Conference's finding that emergency conditions due to the COVID-19 national emergency have materially affected and will materially affect the functioning of the federal courts generally remains in effect. Emergency conditions also continue to materially affect the functioning of this district, as described in the Standing Orders currently in effect in this district due to the COVID-19 pandemic. As noted in the most recent Standing Order, issued on November 25, 2020, conditions with respect to the COVID-19 outbreak in this district have significantly worsened in recent weeks as daily new case counts, incidence rates, PCR testing positivity rates, and hospitalizations have risen sharply and new restrictions have been imposed on the State and local level, leading the Court to take steps to reduce the level of on-site activity at courthouses and

Court locations in this district. Because conditions have continued to worsen, the Court reverted to Phase One of its COVID-19 Reopening Guidelines, effective December 17, 2020.

I further find that most felony pleas under Rule 11 of the Federal Rules of Criminal Procedure and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure still cannot be conducted in person in this district without seriously jeopardizing public health and safety. While the Court has resumed holding some essential in-person proceedings, including some felony pleas and sentencings, in-person proceedings are discouraged at this time unless absolutely necessary due to the substantial levels of community transmission of the virus this district is experiencing. The Court is continuing to use video conferencing and telephone conferencing for court proceedings to the greatest extent possible to protect the health and safety of all case participants, including judges, court staff, attorneys, and parties, especially those at increased risk of serious illness from COVID-19. To ensure compliance with health and safety protocols, in-person proceedings that must go forward may be held in only a small number of designated courtrooms, limiting the number of proceedings that may be held each week. Given the current conditions and the substantial limitations on the Court's ability to conduct in-person proceedings at this time, the use of video conferencing and telephone conferencing remains necessary for criminal case events in this district, including felony pleas and felony sentencings.

Accordingly, upon review of the authorization of video conferencing and telephone conferencing for criminal case events set forth in the March 30 Standing Order and extended by the June 26 and September 24 Standing Orders, as required under Section 15002(b)(3) of the CARES Act, it is ORDERED the authorization is extended for an additional 90 days. Specifically, with the consent of the defendant or juvenile after consultation with counsel, video conferencing, or telephone conferencing if video conferencing is not reasonably available,

is authorized to be used for all criminal case events listed in Section 15002(b) of the CARES Act. In addition, if a district judge in an individual case finds, for specific reasons, that a felony plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice, the judge may, with the consent of the defendant after consultation with counsel, use video conferencing, or telephone conferencing if video conferencing is not reasonably available, for the felony plea or sentencing in that case. Judges may also use this authority for equivalent events in juvenile cases as described in Section 15002(b)(2)(B).

Pursuant to Section 15002(b)(3) of the CARES Act, this authorization will remain in effect for 90 days unless terminated earlier. If emergency conditions continue to exist 90 days from the date of this Standing Order, I will again review this authorization and determine whether to further extend it.

/s/ Juan R. Sánchez
Juan R. Sánchez
Chief Judge

Date: December 21, 2020

APPENDIX 11

**STANDNG ORDER 1-15-2021 IN RE: EIGHTH ADJUSTMENT TO THE
COURT OPERATIONS DUE TO THE EXTIGENT CIRCUMSTANCES
CREATED BY COVID-19**

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:

**EIGHTH EXTENSION OF
ADJUSTMENTS TO COURT
OPERATIONS DUE TO THE
EXIGENT CIRCUMSTANCES
CREATED BY COVID-19**

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STANDING ORDER

This Standing Order is issued in furtherance of the Court's prior Standing Orders issued on March 13, 2020, March 18, 2020, April 10, 2020, May 29, 2020, June 30, 2020, July 31, 2020, August 31, 2020, October 5, 2020, October 30, 2020, and November 25, 2020, which implemented and extended certain adjustments to Court operations due to the exigent circumstances created by the ongoing coronavirus disease 2019 (COVID-19) pandemic and in the interest of public health and safety.

The COVID-19 pandemic continues to significantly impact Court operations in this district, as outlined in the Court's prior Standing Orders. The Court continues to closely monitor the outbreak in this district and the guidance available from government officials and public health authorities at the Federal, State, and local level. In November 2020, worsening conditions with regard to the COVID-19 outbreak in the Commonwealth of Pennsylvania and in this district—including increasing daily new case counts, incidence rates, PCR testing positivity rates, and COVID-19-specific hospitalizations, as well as new restrictions and mitigation measures imposed on the State and local level—led the Court to take steps to temporarily reduce the level of on-site activity at courthouses and Court locations in this district and to postpone certain in-person proceedings, particularly those requiring large numbers of people to gather for extended periods of time. On November 25, 2020, the Court issued a Standing Order continuing all civil and criminal jury selections and jury trials and Central Violations Bureau proceedings through January

15, 2021, and directing that impaneled grand juries would not meet from December 7, 2020, through January 15, 2021. The Standing Order also encouraged judges to hold in-person proceedings only when absolutely necessary and to use video and telephone conferencing as much as possible. Because conditions continued to worsen following the issuance of the November 25 Standing Order, the Court reverted to Phase One of its COVID-19 Reopening Guidelines, effective December 17, 2020.

Since the November 25 Standing Order was issued, the number of COVID-19 cases in Pennsylvania has more than doubled, and the number of COVID-19 cases in this district has nearly doubled. To date, there have been more than 748,000 cases of COVID-19 in Pennsylvania and more than 343,000 cases in this district. While average daily new case counts for the district as a whole have declined somewhat from peak levels in mid-December, new case counts remain higher than they were when the November 25 Standing Order was issued, and cases are again beginning to increase. Incidence rates, positivity rates, and COVID-19-specific hospitalizations also remain above November levels in most counties in this district, and all counties in this district continue to experience substantial levels of community transmission of the virus. Although some of the more recently imposed State and local restrictions have been or will soon be lifted, many restrictions remain in place. And public health authorities at the Federal, State, and local level continue to emphasize the need for precautions to avoid exposure to the virus and prevent its spread.

Upon consideration of the current circumstances with respect to the COVID-19 outbreak in this district, including the circumstances described above as well those described in the prior Standing Orders, the Court finds it is necessary and appropriate to extend the existing continuance of all jury selections and jury trials for an additional month in order to protect public health and safety, including the safety of Court personnel and all persons entering courthouses and Court locations in this district. It is therefore ORDERED as follows:

1. All civil and criminal jury selections and jury trials scheduled to begin on or before February 15, 2021, before any district or magistrate judge in any courthouse or Court location in this district are CONTINUED pending further Court order.

2. All jury selections and jury trials impacted by this Standing Order will be rescheduled by the presiding judge. Aside from ordering a jury trial, individual judges presiding over criminal proceedings may take such actions consistent with this Standing Order as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties.

3. With respect to criminal trials continued by this Standing Order, the Court is cognizant of the right of criminal defendants to a speedy and public trial under the Sixth Amendment and the particular application of that right in cases involving defendants who are detained pending trial. In light of the circumstances regarding the COVID-19 outbreak in this district outlined above and in the Court's prior Standing Orders, the Court finds the ends of justice served by granting a continuance outweigh the best interest of the public and each defendant in a speedy trial. Existing conditions with respect to the COVID-19 outbreak in this district impede the Court's ability to obtain an adequate complement of trial jurors at this time and impact the ability of Court personnel, counsel, defendants, and other case participants to be present during trial. Given current conditions as well as the large number of people that must be assembled to conduct a jury trial, the Court has determined it is not possible to conduct jury trials safely and in accordance with available public health guidance at this time. In these circumstances, and given the seriousness of the ongoing COVID-19 outbreak in this district, failure to postpone jury trials through February 15, 2021, would be likely to make the continuation of such trials impossible or result in a miscarriage of justice. Accordingly, the additional time period from January 15, 2021, through February 15, 2021, shall be excluded under the Speedy Trial Act, 18 U.S.C.

§ 3161(h)(7)(A), for all criminal cases impacted by this trial continuance. This period of exclusion is in addition to the period of exclusion previously granted for the time period from March 13, 2020, through January 15, 2021. The Court may extend the period of exclusion by further order as circumstances may warrant, and the presiding judge in any criminal case for which trial is continued under this Standing Order may make any additional findings and exclude additional time, as necessary and appropriate, regarding the scheduling of any new date for trial. Any motion by a criminal defendant seeking an exception to this Standing Order for the purpose of exercising the defendant's speedy trial rights shall be referred to the Chief Judge.

4. Meetings of impaneled grand juries and Central Violations Bureau proceedings may resume beginning the week of January 19, 2021, if conditions allow and with appropriate health and safety precautions in place.

5. Essential in-person proceedings may continue to be held in designated courtrooms in accordance with the current scheduling protocol, at the discretion of the presiding judge. Judges are encouraged to hold in-person proceedings only when absolutely necessary and to use video and telephone conferencing as much as possible.

Except as modified herein or by other Standing Orders issued since May 29, 2020, the May 29, 2020, Standing Order remains in effect.

IT IS SO ORDERED.

/s/ Juan R. Sánchez
Juan R. Sánchez
Chief Judge

Date: January 15, 2021

APPENDIX 12

**STANDNG ORDER 2-21-2021 IN RE: NINETH ADJUSTMENT TO THE
COURT OPERATIONS DUE TO THE EXTIGENT CIRCUMSTANCES
CREATED BY COVID-19**

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:

**NINTH EXTENSION OF
ADJUSTMENTS TO COURT
OPERATIONS DUE TO THE
EXIGENT CIRCUMSTANCES
CREATED BY COVID-19**

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STANDING ORDER

This Standing Order is issued in furtherance of the Court's prior Standing Orders issued on March 13, 2020, March 18, 2020, April 10, 2020, May 29, 2020, June 30, 2020, July 31, 2020, August 31, 2020, October 5, 2020, October 30, 2020, November 25, 2020, and January 15, 2021, which implemented and extended certain adjustments to Court operations due to the exigent circumstances created by the ongoing coronavirus disease 2019 (COVID-19) pandemic and in the interest of public health and safety. This Standing Order addresses civil and criminal jury selections and jury trials, which were previously continued through February 15, 2021.

The COVID-19 pandemic continues to significantly impact Court operations in this district, as outlined in the Court's prior Standing Orders. In November 2020, worsening conditions with regard to the COVID-19 outbreak in the Commonwealth of Pennsylvania and in this district—including increasing daily new case counts, incidence rates, PCR testing positivity rates, and COVID-19-specific hospitalizations, as well as new restrictions and mitigation measures imposed on the State and local level—led the Court to take steps to temporarily reduce the level of on-site activity at courthouses and Court locations in this district and to postpone certain in-person proceedings, particularly those requiring large numbers of people to gather for extended periods of time. On November 25, 2020, the Court issued a Standing Order continuing all civil and criminal jury selections and jury trials and all Central Violations Bureau proceedings through

January 15, 2021, and directing that impaneled grand juries would not meet from December 7, 2020, through January 15, 2021. The Standing Order also encouraged judges to hold in-person proceedings only when absolutely necessary and to use video and telephone conferencing as much as possible. Because conditions continued to worsen following the issuance of the November 25 Standing Order, the Court reverted to Phase One of its COVID-19 Reopening Guidelines, effective December 17, 2020. On January 15, 2021, the Court issued a further Standing Order continuing all civil and criminal jury selections and jury trials through February 15, 2021, in light of then-existing conditions with regard to COVID-19, including daily new case counts, incidence rates, positivity rates, and COVID-19-specific hospitalizations at levels above those that prompted the reduction in on-site activity in November 2020.

Since the January 15 Standing Order was issued, the number of COVID-19 cases in Pennsylvania has increased to more than 884,000, including more than 404,000 cases in this district. While average daily new case counts and other metrics for the district as a whole have continued to decline from peak levels in mid-December, conditions still have not sufficiently improved to support the resumption of jury trials at this time. District-wide, average daily new case counts remain higher than they were for much of November, and positivity rates remain at or above early-November levels in most EDPA counties. All counties in this district continue to experience substantial levels of community transmission of the virus, and mitigation measures remain in place in Pennsylvania and the City of Philadelphia. These include restrictions on indoor events and gatherings, requirements for travelers entering Pennsylvania from other States or countries, and restrictions on businesses, which must conduct their operations through individual teleworking unless impossible and, if operating in person, are subject to occupancy restrictions and safety requirements. The CDC and State and local public health authorities also continue to

emphasize the need for precautions to avoid exposure to the virus and prevent its spread, including maintaining at least six feet of physical distance from others, wearing masks or face coverings in public, limiting nonessential travel, avoiding public transportation when possible, working from home, avoiding large gatherings, and limiting face-to-face contact with others. The CDC has stressed the need for rigorous and increased compliance with public health mitigation strategies, especially in light of the emergence of new variants of the virus which appear to spread more easily and quickly than other variants and which have been detected in the United States.

Upon consideration of the current circumstances with respect to the COVID-19 outbreak in this district, including the circumstances described above as well as those described in the prior Standing Orders, the Court finds it is necessary and appropriate to extend the existing continuance of all jury selections and jury trials through the end of February 2021 and until further Court order to protect public health and safety, including the safety of Court personnel and all persons entering courthouses and Court locations in this district. The Court continues to closely monitor the outbreak in this district and the guidance available from government officials and public health authorities at the Federal, State, and local level. An order authorizing the resumption of jury trials will be issued as soon as conditions allow. It is therefore ORDERED as follows:

1. All civil and criminal jury selections and jury trials scheduled to begin in February 2021 before any district or magistrate judge in any courthouse or Court location in this district are CONTINUED pending further Court order. Jury trials shall not resume until further Court order.

2. All jury selections and jury trials impacted by this Standing Order will be rescheduled by the presiding judge. Aside from ordering a jury trial, individual judges presiding over criminal proceedings may take such actions consistent with this Standing Order as may be

lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties.

3. With respect to criminal trials continued by this Standing Order, the Court is cognizant of the right of criminal defendants to a speedy and public trial under the Sixth Amendment and the particular application of that right in cases involving defendants who are detained pending trial. In light of the circumstances regarding the COVID-19 outbreak in this district outlined above and in the Court's prior Standing Orders, the Court finds the ends of justice served by granting a continuance outweigh the best interest of the public and each defendant in a speedy trial. Existing conditions with respect to the COVID-19 outbreak in this district impede the Court's ability to obtain an adequate complement of trial jurors at this time and impact the ability of Court personnel, counsel, defendants, and other case participants to be present during trial. Given current conditions as well as the large number of people that must be assembled to conduct a jury trial, the Court has determined it is not possible to conduct jury trials safely and in accordance with available public health guidance at this time. In these circumstances, and given the seriousness of the ongoing COVID-19 outbreak in this district, failure to postpone jury trials through at least February 28, 2021, and until further Court order would be likely to make the continuation of such trials impossible or result in a miscarriage of justice. Accordingly, the additional time period from February 15, 2021, until further Court order authorizing the resumption of jury trials shall be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), for all criminal cases impacted by this trial continuance. This period of exclusion is in addition to the period of exclusion previously granted for the time period from March 13, 2020, through February 15, 2021. The Court may extend the period of exclusion by further order as circumstances may warrant, and the presiding judge in any criminal case for which trial is

continued under this Standing Order may make any additional findings and exclude additional time, as necessary and appropriate, regarding the scheduling of any new date for trial. Any motion by a criminal defendant seeking an exception to this Standing Order for the purpose of exercising the defendant's speedy trial rights shall be referred to the Chief Judge.

4. Essential in-person proceedings may continue to be held in designated courtrooms in accordance with the current scheduling protocol, at the discretion of the presiding judge.

Except as modified herein or by other Standing Orders issued since May 29, 2020, the May 29, 2020, Standing Order remains in effect.

IT IS SO ORDERED.

/s/ Juan R. Sánchez
Juan R. Sánchez
Chief Judge

Date: February 12, 2021

APPENDIX 13

**STANDNG ORDER 3-19-2021 IN RE: TENTH ADJUSTMENT TO THE
COURT OPERATIONS DUE TO THE EXTIGENT CIRCUMSTANCES
CREATED BY COVID-19**

**UNITED STATES DISTRICT COURT F
OR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:

**TENTH EXTENSION OF
ADJUSTMENTS TO COURT
OPERATIONS DUE TO THE
EXIGENT CIRCUMSTANCES
CREATED BY COVID-19**

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STANDING ORDER

This Standing Order is issued in furtherance of the Court's prior Standing Orders issued on March 13, 2020, March 18, 2020, April 10, 2020, May 29, 2020, June 30, 2020, July 31, 2020, August 31, 2020, October 5, 2020, October 30, 2020, November 25, 2020, January 15, 2021, and February 12, 2021, which implemented and extended certain adjustments to Court operations due to the exigent circumstances created by the ongoing coronavirus disease 2019 (COVID-19) pandemic and in the interest of public health and safety. This Standing Order addresses civil and criminal jury selections and jury trials, which were previously continued through the end of February 2021 and until further Court order.

The COVID-19 pandemic continues to significantly impact Court operations in this district, as outlined below and in the Court's prior Standing Orders. Throughout the pandemic, the Court has been closely monitoring the COVID-19 outbreak in this district and the guidance available from government officials and public health authorities at the Federal, State, and local level, and adjusting Court operations as circumstances have required in order to protect the health and safety of Court personnel and all those entering courthouses and Court locations in this district.

In September 2020, after extensive planning, the Court resumed holding criminal jury trials on a limited basis pursuant to its Initial Guidelines for the Reinstitution of Jury Trials, which include numerous precautions to allow jury trials to proceed safely and in accordance with public health guidance. As explained in prior Standing Orders, the need for these health and safety

precautions limits the Court's capacity to hold criminal jury trials, which require the summoning of large numbers of prospective jurors and the use and staffing of multiple courtrooms for each jury selection and trial in order to limit the number of people in one room at a time and to ensure adequate space for physical distancing. Following the resumption of jury trials in September 2020, the Court remained in the initial test period for jury trials, during which only one criminal jury trial could be conducted at a time.

In November 2020, conditions with regard to the COVID-19 outbreak in the Commonwealth of Pennsylvania and in this district materially worsened as daily new case counts, incidence rates, PCR testing positivity rates, and COVID-19-specific hospitalizations rapidly increased, prompting the imposition of new restrictions and mitigation measures at the State and local level. In response to the deteriorating public health situation, on November 25, 2020, the Court issued a Standing Order that, among other things, continued all civil and criminal jury selections and jury trials through January 15, 2021. Because conditions continued to worsen following issuance of the November 25 Standing Order, the Court reverted to Phase One of its COVID-19 Reopening Guidelines, effective December 17, 2020. The November 25 jury trial continuance has twice been extended, initially through February 15, 2021, and, later, through the end of February and until further Court order, pursuant to Standing Orders issued on January 15, 2021, and February 12, 2021.

Since the February 12, 2021, Standing Order was issued, the number of COVID-19 cases in Pennsylvania has increased to more than 976,000, including more than 447,000 cases in this district. While average daily new case counts and other metrics for the district as a whole have continued to decline from peak levels in mid-December, existing conditions underscore the need for continued caution as the Court proceeds with its phased reopening.

District-wide, average daily new case counts are still high as most counties in this district continue to experience substantial levels of community transmission of the virus. The 14- and 7-day averages of daily new case counts remain at levels seen in early November and are significantly higher than they were when the Court entered the initial test period for jury trials in mid-September. Although some of the restrictions that were put in place in Pennsylvania and the City of Philadelphia to address the November surge in COVID-19 cases have been eased, others remain in place. Masks must be worn in all indoor settings whenever people from more than one household are present, even if six-foot distancing can be maintained. Businesses must continue to conduct their operations through individual teleworking of their employees unless impossible and, if operating in person, are subject to occupancy restrictions and safety requirements. Indoor events and gatherings are subject to revised occupancy limits and must comply with masking requirements and six-foot physical distancing.

While the pace of COVID-19 vaccinations in Pennsylvania and Philadelphia has increased, vaccine supply remains limited, and the vast majority of the population in this district has not yet been vaccinated. Most attorneys and Court staff are not yet eligible to receive the vaccine under the Pennsylvania and Philadelphia vaccination plans, and most inmates at the Federal Detention Center in Philadelphia have not yet had the opportunity to be vaccinated. Even as vaccinations increase, the CDC and State and local public health authorities continue to emphasize the need for precautions to avoid exposure to the virus and prevent its spread, including maintaining at least six feet of physical distance from others, wearing masks or face coverings in public, limiting nonessential travel, avoiding public transportation when possible, working from home, avoiding large gatherings, and limiting face-to-face contact with others. The CDC continues to stress the need for rigorous and increased compliance with public health mitigation strategies, especially in

light of the emergence of new variants of the virus which appear to spread more easily and quickly than other variants and which have been detected in the United States. Based on these and other factors, the Court remains in Phase One of its COVID-19 Reopening Guidelines.

Upon consideration of the current circumstances with respect to the COVID-19 outbreak in this district, including the circumstances described above as well as those described in the prior Standing Orders, the Court finds it is necessary and appropriate to extend the existing continuance of all jury selections and jury trials in this district through April 5, 2021, to protect public health and safety, including the safety of Court personnel and all persons entering courthouses and Court locations in this district. Absent a significant increase in COVID-19 risk in this district, the Court plans to resume jury trials on a limited basis the week of April 5, 2021.

When jury trials resume, the Court will re-enter the initial test period for jury trials. Criminal cases will again be prioritized. Due to the health and safety precautions necessary to conduct criminal jury trials at this stage of the pandemic and in order to limit the number of jurors in the courthouse at one time, while the Court remains in the initial test period, only one criminal jury trial will be conducted at a time, as outlined in the Initial Guidelines for the Reinstitution of Jury Trials. The Court has continued to work with representatives of the U.S. Attorney's Office and the Federal Community Defender Office in this district to identify cases that are ready to proceed to trial and to prioritize those cases based on criteria developed by the Court. Trials will be scheduled in accordance with the master list maintained by the Court. As criminal trials resume, cases in which there is only one defendant, the defendant is detained, the trial is anticipated to last less than one week, and the witnesses consist primarily of law enforcement officers and government personnel will be prioritized.

The Court also anticipates that civil jury trials may resume on a limited basis during the test period pursuant to protocols currently being developed by the Court. Because civil trials will involve the summoning and impaneling of fewer prospective jurors than criminal trials, they will not require the same commitment of space and staff as is necessary to maintain health and safety protocols in criminal cases. It is anticipated that civil jury trials will be held in the Ceremonial Courtroom in the James A. Byrne U.S. Courthouse, which can safely accommodate a larger number of jurors and case participants than the standard courtrooms, so as not to interfere with the current criminal trial schedule. At least initially, civil jury trials will be limited to cases involving only one plaintiff and one defendant in which the trial is expected to last no more than one week. The Court has been compiling a master list of civil cases that are ready to be tried and meet these criteria. Trials will be scheduled in accordance with the master list maintained by the Court. At most, one civil jury trial may be held per week.

It is therefore ORDERED as follows:

1. All civil and criminal jury selections and jury trials scheduled to begin on or before April 5, 2021, before any district or magistrate judge in any courthouse or Court location in this district are CONTINUED pending further Court order.
2. Absent a significant increase in COVID-19 risk in this district, the Court will resume holding jury trials on limited basis beginning the week of April 5, 2021. The Court anticipates that it will remain in the initial test period for jury trials through at least June 7, 2021. During this period, trials may be scheduled only in cases included on the master lists described above and will be scheduled in accordance with a master trial calendar. No more than one criminal jury trial and one civil jury trial will be held each week.

3. With respect to criminal trials continued by this Standing Order, the Court is cognizant of the right of criminal defendants to a speedy and public trial under the Sixth Amendment and the particular application of that right in cases involving defendants who are detained pending trial. In light of the circumstances regarding the COVID-19 outbreak in this district outlined above and in the Court's prior Standing Orders, the Court finds the ends of justice served by granting a continuance of jury trials through April 5, 2021, outweigh the best interest of the public and each defendant in a speedy trial. Existing conditions with respect to the COVID-19 outbreak in this district continue to impede the Court's ability to obtain an adequate complement of trial jurors at this time and impact the ability of Court personnel, counsel, defendants, and other case participants to be present during trial. Given current conditions as well as the large number of people that must be assembled to conduct a jury trial, the Court has determined it is not possible to conduct jury trials safely and in accordance with available public health guidance at this time. In these circumstances, and given the seriousness of the ongoing COVID-19 outbreak in this district, failure to postpone jury trials through April 5, 2021, would likely make the continuation of such trials impossible or result in a miscarriage of justice. Accordingly, the additional time period from today's date until April 5, 2021, shall be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), for all criminal cases impacted by this trial continuance. This period of exclusion is in addition to the period of exclusion previously granted for the time period from March 13, 2020, until further Court order authorizing the resumption of jury trials—i.e., the date of this Standing Order. The Court may extend the period of exclusion by further order as circumstances may warrant, and the presiding judge in any criminal case for which trial is continued under this Standing Order may make any additional findings and exclude additional time, as necessary and appropriate, regarding the scheduling of any new date for trial.

4. For those criminal cases that cannot be tried during the initial test period consistent with the health and safety protocols and limitations necessary for the conduct of jury trials at this time, as described above and in prior Standing Orders and the Initial Guidelines for the Reinstitution of Jury Trials, the additional time period from April 5, 2021, through June 7, 2021, shall also be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A). The Court finds the ends of justice served by continuances that will be necessary in those cases outweigh the best interest of the public and each defendant in a speedy trial because, given the circumstances regarding the COVID-19 outbreak in this district, resumption of jury trials without these health and safety protocols and limitations prior to June 7, 2021, would jeopardize public health and safety and pose significant risks of exposure and transmission of the virus to trial participants, which would make continuation of a trial impossible or result in a miscarriage of justice. The Court may extend the period of exclusion by further order as circumstances may warrant, and the presiding judge in any criminal case for which trial will be continued based on this Standing Order may make any additional findings and exclude additional time, as necessary and appropriate, regarding the scheduling of any new date for trial.

5. Any motion by a criminal defendant seeking an exception to this Standing Order for the purpose of exercising the defendant's speedy trial rights shall be referred to the Chief Judge.

Except as modified herein or by other Standing Orders issued since May 29, 2020, the May 29, 2020, Standing Order remains in effect.

IT IS SO ORDERED.

/s/ Juan R. Sánchez
Juan R. Sánchez
Chief Judge

Date: March 18, 2021

APPENDIX 14

**STANDNG ORDER 3-30-2021 IN RE: ELEVENTH ADJUSTMENT TO THE
COURT OPERATIONS DUE TO THE EXTIGENT CIRCUMSTANCES
CREATED BY COVID-19**

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE:	:	
	:	
ELEVENTH EXTENSION OF	:	STANDING ORDER
ADJUSTMENTS TO COURT	:	
OPERATIONS DUE TO THE	:	
EXIGENT CIRCUMSTANCES	:	
CREATED BY COVID-19	:	

This Standing Order is issued in furtherance of the Court’s prior Standing Orders issued on March 13, 2020, March 18, 2020, April 10, 2020, May 29, 2020, June 30, 2020, July 31, 2020, August 31, 2020, October 5, 2020, October 30, 2020, November 25, 2020, January 15, 2021, February 12, 2021, and March 18, 2021, which implemented and extended certain adjustments to Court operations due to the exigent circumstances created by the ongoing coronavirus disease 2019 (COVID-19) pandemic and in the interest of public health and safety. The most recent Standing Order, issued on March 18, 2021, continued all civil and criminal jury selections and jury trials through April 5, 2021, and outlined the Court’s plan to resume holding jury trials on a limited basis beginning the week of April 5, 2021, absent a significant increase in COVID-19 risk in this district. This Standing Order extends the existing jury trial continuance through May 3, 2021, and postpones the planned resumption of jury trials until the week of May 3, 2021, due to the recent spike in COVID-19 cases in this district.

After weeks of declining numbers, COVID-19 cases in the Commonwealth of Pennsylvania and in this district are again increasing. Since the March 18, 2021, Standing Order was issued, the total number of COVID-19 cases in Pennsylvania has increased to more than 1,020,000, and the total number of cases in this district has increased to more than 470,000. District wide, the 14- and 7-day averages of new case counts have increased significantly in the past two weeks and are now at levels last seen in mid-February 2021. Daily new COVID-19 cases

per 100,000 population have increased in eight of the nine counties in this district in recent weeks, in some instances by more than 50%. Positivity rates have also increased in eight of the nine counties in this district. Positivity rates are currently above 5% in all counties in this district and above 7% in five of those counties.

These increases are occurring as new and more transmissible variants of the virus are circulating and as more cases of these variants are being detected in Pennsylvania. These increases are also occurring at time when a majority of the population in this district, including most case participants, has not yet been vaccinated. Although Pennsylvania and Philadelphia continue to make progress in vaccinating residents, most attorneys and Court staff are not yet eligible for the vaccine under the Pennsylvania and Philadelphia vaccination plans, and most inmates at the Federal Detention Center in Philadelphia have not yet had the opportunity to be vaccinated.

While Pennsylvania plans to ease some of the restrictions currently in place in the Commonwealth, due to concern about the rise in the number of COVID-19 cases and hospitalizations in Philadelphia, the City will not adopt these relaxed restrictions at this time. The City has instead announced that, throughout the month of April, it will continue to review the local trends in cases, hospitalizations, and deaths to gauge when it is safe to further loosen restrictions.

Upon consideration of the current circumstances with respect to the COVID-19 outbreak in this district, including the circumstances described above as well as those described in the prior Standing Orders, the Court finds it is necessary and appropriate to extend the existing continuance of all jury selections and jury trials in this district through May 3, 2021, and to postpone the planned resumption of jury trials to the week of May 3, 2021, in order to protect public health and safety, including the safety of Court personnel and all persons entering courthouses and Court locations in this district.

It is therefore ORDERED as follows:

1. All civil and criminal jury selections and jury trials scheduled to begin on or before May 3, 2021, before any district or magistrate judge in any courthouse or Court location in this district are CONTINUED pending further Court order. All grand jury selections are also CONTINUED through May 3, 2021.

2. The Court will resume holding jury trials on a limited basis beginning the week of May 3, 2021, as outlined in the March 18, 2021, Standing Order. The Court anticipates that it will remain in the initial test period for jury trials through at least June 7, 2021. During this period, trials will be scheduled in accordance with the March 18, 2021, Standing Order.

3. With respect to criminal trials continued by this Standing Order, the Court is cognizant of the right of criminal defendants to a speedy and public trial under the Sixth Amendment and the particular application of that right in cases involving defendants who are detained pending trial. In light of the circumstances regarding the COVID-19 outbreak in this district outlined above and in the Court's prior Standing Orders, the Court finds the ends of justice served by granting a continuance of jury trials through May 3, 2021, outweigh the best interest of the public and each defendant in a speedy trial. Existing conditions with respect to the COVID-19 outbreak in this district continue to impede the Court's ability to obtain an adequate complement of trial jurors at this time and impact the ability of Court personnel, counsel, defendants, and other case participants to be present during trial. Given current conditions as well as the large number of people that must be assembled to conduct a jury trial, the Court has determined it is not possible to conduct jury trials safely and in accordance with available public health guidance at this time. In these circumstances, and given the seriousness of the ongoing COVID-19 outbreak in this district, failure to postpone jury trials through May 3, 2021, would likely make the continuation of

such trials impossible or result in a miscarriage of justice. Accordingly, the additional time period from April 5, 2021, through May 3, 2021, shall be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), for all criminal cases impacted by this trial continuance. This period of exclusion is in addition to the period of exclusion previously granted for the time period from March 13, 2020, through April 5, 2021. The Court may extend the period of exclusion by further order as circumstances may warrant, and the presiding judge in any criminal case for which trial is continued under this Standing Order may make any additional findings and exclude additional time, as necessary and appropriate, regarding the scheduling of any new date for trial.

4. For those criminal cases that cannot be tried during the initial test period consistent with the health and safety protocols and limitations necessary for the conduct of jury trials at this time, as described in prior Standing Orders and the Initial Guidelines for the Reinstitution of Jury Trials, the additional time period from May 3, 2021, through June 7, 2021, shall also be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A). The Court finds the ends of justice served by continuances that will be necessary in those cases outweigh the best interest of the public and each defendant in a speedy trial because, given the circumstances regarding the COVID-19 outbreak in this district, resumption of jury trials without these health and safety protocols and limitations prior to June 7, 2021, would jeopardize public health and safety and pose significant risks of exposure and transmission of the virus to trial participants, which would make continuation of a trial impossible or result in a miscarriage of justice. The Court may extend the period of exclusion by further order as circumstances may warrant, and the presiding judge in any criminal case for which trial will be continued based on this Standing Order may make any additional findings and exclude additional time, as necessary and appropriate, regarding the scheduling of any new date for trial.

5. Any motion by a criminal defendant seeking an exception to this Standing Order for the purpose of exercising the defendant's speedy trial rights shall be referred to the Chief Judge.

Except as modified herein or by other Standing Orders issued since May 29, 2020, the May 29, 2020, Standing Order remains in effect.

IT IS SO ORDERED.

/s/ Juan R. Sánchez
Juan R. Sánchez
Chief Judge

Date: March 30, 2021