UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON

In Re:

REMOTE ACCESS TO COURT

COVID-19 AND RELATED

in its prior General Orders.

CORONAVIRUS

OPERATIONS UNDER THE EXIGENT

CIRCUMSTANCES CREATED BY

GENERAL ORDER NO. 03-20

This General Order is being issued in response to the developing outbreak of Coronavirus Disease 2019 (COVID-19) and in conjunction with the Court's General Orders of March 6, 2020, and March 17, 2020, ordering, among other things, the closing of the Seattle and Tacoma courthouses for 30 days and ordering that "all criminal initial appearances and detention hearings will be conducted via video/telephone conference with the defendant's permission, unless directed otherwise by the Court." General Order 02-20. The Court incorporates its prior findings regarding COVID-19 and the current state of emergency declarations and guidelines as set forth

This General Order provides the protocol regarding how the Court will conduct criminal proceedings via video/telephone conferencing in a manner that protects the safety and health of all those involved in the proceedings, while preserving the legal rights of the accused and permitting public access.

The Court recognizes that the COVID-19 crisis is an evolving one and therefore establishes three levels of video/telephone conferencing with the goal of providing the highest level of connectivity for each case while recognizing the need to adopt more remote access as the situation develops. Constitutional due process requires that a defendant be present "to the extent that a fair and just hearing would be thwarted by his absence[.]" *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987). The Court hereby finds that during this health emergency, when in-person proceedings would put the health of all participants at risk, including the defendant's, a defendant's due process rights can best be preserved by providing the highest level of connectivity that is available, while protecting the health and safety of all participants.

Accordingly, the Court ORDERS, effective immediately, that necessary criminal proceedings, including, but not limited to, initial appearances, detention hearings, and bond revocation hearings will be conducted in the following manner, as deemed appropriate by the presiding judge, or as further directed by the undersigned:

- Level One access is considered an In-Court hearing wherein all parties are in the same courtroom. Level One access is not feasible given the guidance on COVID-19.
 Accordingly, the Court sets forth the following three available levels of remote access.
- 2. Level Two access is an In-Court hearing with only the presiding Judge and necessary court staff in one courtroom and the defendant and the United States Marshals in a separate courtroom, connected by video conferencing. The Assistant United States Attorney (AUSA), the Federal Public Defender (FPD), Criminal Justice Act (CJA) attorney, retained defense counsel, the United States Probation and Pretrial Officers, Court Certified Interpreters, witnesses, victims, and the In-Court Deputy (hereinafter collectively referred to as "Participants") will be given the option to appear via

videoconferencing, via telephone using the Court's conference bridge line, or appearing in person in the courtroom with the defendant or with the presiding judge so long as safe distancing is maintained. Instructions for videoconferencing will be provided by the Court if necessary.

- 3. Level Three access is an entirely remote proceeding wherein no person will be in the Courtroom and all parties will appear remotely. At a minimum, the Judge and the Defendant will appear via video conferencing. The Participants will be given the option to appear via videoconferencing or via telephone using the Court's conference bridge line.
- 4. Level Four access is a telephonic proceeding wherein no person will be in the Courtroom, there is no video conferencing available, and all Participants will appear by telephone using the Court's conference bridge line. Exhibits and other documents will be exchanged between the Court, parties and counsel via e-mail.
- 5. For Levels Two through Four above, the Court will assist defense counsel and the interpreter, when necessary, in maintaining a separate line for confidential communications with the client.
- 6. Consistent with General Order 02-20, the Seattle and Tacoma Courthouses will remain closed to the public, with limited exceptions. For Levels Two through Four above, the public will be permitted access to the hearing using the Court's teleconference bridge line, as available. An announcement regarding the public's right of access and dialing instructions will be posted on the Court's website. Members of the public and media are strictly prohibited from recording or broadcasting any hearing, in whole or in part, in any fashion.

- 7. All hearings conducted pursuant this Order will be recorded by reliable means.
- 8. In an effort to limit any exposure to COVID-19 and protect the health and safety of everyone involved in the proceeding, whether it is Level Two, Three, or Four, the Court hereby orders that all documents and signatures required from any party including, but not limited to, financial affidavits, consents to waive preliminary hearing, Pretrial and Probation reports, and appearance bonds/orders for release shall be performed electronically with the [s/name] format. For the defendant, the defense counsel may sign on behalf of the defendant, after receiving consent, and file the document electronically.

Initial Appearances/Detention Hearings: All parties will attempt to address the issue of detention at the initial appearance, when practicable. A separate hearing will only be ordered if the good cause standard set forth in 18 U.S.C. § 3142(f)(2) has been met. The factors to be considered at any detention hearing remain as set forth in 18 U.S.C. § 3142(g). These factors include, but are not limited to, "safety of any other person and the community" as well as "the history and characteristics of the person, including . . . the person's physical and mental condition." The presiding judge will give specific consideration of these factors in light of the existing health emergency. Pretrial and Probation reports will be circulated to the parties via email and will be kept confidential, as per the usual and customary procedures.

Preliminary Hearings: Unless waived by the defendant pursuant to Rule 5.1(a)(1) all preliminary hearings are continued pursuant to General Order 02-20. The Court will set status conferences 30-days out at each initial appearance to determine if a preliminary hearing can be set. When requested, the presiding judge may set any preliminary hearing in accordance with above emergency procedures.

Motions to Reopen Detention Hearings: The Court will attempt to address motions to reopen detention hearings on an expedited basis for reasons associated with the ongoing health emergency. Accordingly, the Court ORDERS as follows:

- 1. The FPD, CJA counsel, or retained counsel should identify individuals who are currently detained but should be reconsidered in light of the ongoing health emergency and who do not pose a current and substantial safety risk to the community or flight risk.
- 2. The FPD, CJA counsel, or retained counsel will notify the AUSA and the Probation and Pretrial Services officer assigned to the matter of the designation and schedule a meet and confer conference via telephone to determine if the parties can agree on a stipulation for release.
- 3. If the parties can agree to recommend release, they shall file an emergency joint motion with the Court, with a copy to Probation and Pretrial Services, setting forth the stipulation and any agreement on bond conditions. The joint motion shall be noted for the day it is filed. When practicable, the Court will consult with Probation and Pretrial Services as to whether to release the defendant and any conditions of release if granted and will either rule on the motion without a hearing or set a hearing as soon as practicable.
- 4. If the parties are unable to reach agreement on release, then the FPD, CJA counsel, or retained counsel will file an emergency motion with the Court, provide a copy the Probation and Pretrial Services officer, and note the motion for the following day. The AUSA will file any opposition to the motion by the following day or advise the Court of the reason why additional time is required for a response. Probation and Pretrial Services will attempt to provide the Court with a supplemental report outlining its

recommendations for conditions if release granted, and if the Court deems necessary, the Court will set a hearing as soon as practicable using the procedures outlined in this Order. The Court will continue, vacate, or amend this General Order no later than April 15, 2020.

Dated this 25th day of March, 2020.

RICARDO S. MARTINEZ CHIEF UNITED STATES DISTRICT JUDGE